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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 136.

**GRANT TIMBER AND MANUFACTURING COMPANY,
PLAINTIFF IN ERROR,**

GEORGE W. GRAY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

FILED APRIL 1, 1915.

(23,606)

(23,608)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 136.

GRANT TIMBER AND MANUFACTURING COMPANY,
PLAINTIFF IN ERROR,

vs.

GEORGE W. GRAY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA

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1 To the Honorable Judge of the Fifth Judicial District of Louisiana, holding sessions in and for the Parish of Winn:

The petition of George W. Gray, a resident of the Parish of Winn, State of Louisiana, with respect represents:

That he is in the real and actual possession as owner of the following described property situated in the Parish of Winn, Louisiana, to-wit:

The S. E. $\frac{1}{4}$ of Section 25, Township 10 N. R. 3 West.

That your petitioner is the assignee of the actual settler who actually settled the land herein described prior to 1871.

Petitioner further represents that the Grant Timber & Manufacturing Company, a corporation organized under the laws of the State of Arkansas, and domiciled at Texarkana, Arkansas, and duly qualified to do business in the State of Louisiana, with its Louisiana domicile at Minden, Webster Parish, Louisiana, has disturbed your petitioner in the enjoyment of his possession of the land herein described in the following manner, to-wit:

That in the month of February, 1910, the said Grant Timber & Manufacturing Company, through their agent and employees, went upon said land and is cutting and removing timber growing and standing and being on said land; that your petitioner was in the actual and real possession of said land at the time when the said disturbance occurred; that your petitioner has had possession of said land quietly, undisturbed and without interruption as owner for many years previous to his being disturbed as aforesaid.

That your petitioner by the above described act of the said Grant Timber & Manufacturing Company has suffered a real disturbance in fact and in law; that less than a year has elapsed since said disturbance occurred; that petitioner desires to be maintained in the possession of the said land.

Petitioner further avers that the said land is well worth the sum of Four Thousand Dollars (\$4,000.00).

2 Petitioner further avers that he has been damaged in the sum of Twenty-two Hundred and Fifty Dollars (2250.00) for the timber illegally cut and removed by the said Grant Timber & Manufacturing Company and for the illegal acts in disturbing your petitioner's possession; and in the further sum of Two Hundred and Fifty Dollars (250.00) as Attorney's fees by his being forced to employ counsel to bring and prosecute this suit and to protect petitioner's rights, making a total sum of Twenty-five Hundred Dollars (\$2500.00) for which sum your petitioner is entitled to recover judgment against the said Grant Timber & Manufacturing Company.

Wherefore, premises considered, petitioner prays that said Grant Timber & Manufacturing Company be duly cited to appear and answer this petition and that on final trial hereof that there be judgment in favor of your petitioner and against the said Grant Timber & Manufacturing Company maintaining and quieting your petitioner in the possession of said land described in this petition and that your petitioner have judgment against the said Grant

Timber & Manufacturing Company in the sum of Twenty-five Hundred Dollars (\$2500.00) for damages as above alleged, with Five per Cent. (5%) per annum interest thereon from date of judgment until paid, together with all costs of this suit.

Petitioner prays for all orders and decrees necessary in the premises and for general and equitable relief.

MATHEWS & GAMBLE,
Attorneys for Petitioner.

Endorsed: No. 2485, In Fifth Dist. Court, Winn Parish, La. George W. Gray vs. Grant Timber & Mfg. Co., Petition. Filed Feb. 19, 1910. S. M. Abel, D'y C. D. C.

3 State of Louisiana, Parish of Winn, Fifth District Court.

No. 2485.

GEORGE W. GRAY
vs.
GRANT TIMBER & MFG. CO.

To Grant Timber & Mfg. Co. of the Parish -- Webster, La.:

You are hereby cited to appear in the office of the Clerk of the said Court, in the town of Winnfield, La., of the Parish aforesaid, and comply with the demand contained in the petition, of which a copy accompanies the Citation, or deliver your answer hereto in writing in said office in ten days after service hereof, with one additional day for every ten miles between your residence and the office of the said Clerk.

Witness the Honorable Geo. Wear, Judge of said Court, this the 21st day of Feb., A. D., 1910.

S. M. ABEL,
D'y Clerk Fifth Dist. Court.

Return.

Received the within Citation together with a certified copy of the same and a certified copy of the original Petition in office on the 28th day of February, A. D., 1910, and on the 28th day of February A. D., 1910 I made personal service of Citation and Petition, by delivering the said certified copies to E. E. Fitzgerald, Agt. and Mgr. of Grant Timber & Mfg. Co., a sane person apparently over the age of fourteen years, and domiciled at Minden, La., E. E. Fitzgerald, defendant, in person, in the Parish of Webster, in the town of Minden, La., about — miles from the Court House.

Sheriff's Fees.

Service of Petition and Citation.....	1
Mileage at 7c. a mile.....	..
Total	1

A. H. PHILLIPS,
D'y Sheriff, Webster Parish, La.

4 5th Judicial District Court, Parish of Winn, State of
Louisiana.

No. 2485.

GEORGE W. GRAY
vs.
GRANT TIMBER & MANUFACTURING CO.

In this cause comes the Grant Timber & Manufacturing Company and pleads the exception of no cause of action based on the fact that plaintiff does not claim that the actual settler from whom he alleges that he derived title was in possession of the land at the date of the Grant of same to the New Orleans Pacific Railway Company, and because he does not aver that the said actual settler ever acquired title to said land from the United States Government.

Defendant further pleads the exception of no cause of action for attorney's fees claimed in the petition.

And now reserving the benefit of said exception in case same should be overruled, defendant, for answer to plaintiff's petition, denies general- and specially all of the facts and allegations therein contained.

Defendant specially denies that plaintiff is now or has been at any time in actual possession of the land claimed, but avers that defendant is in actual and legal possession of same and has been since the title to same was severed from the United States Government by virtue of the following Chain of title, to-wit:

United States to New Orleans Pacific Ry. Co. selected December 28, 1883, under Act March 3, 1871, New Orleans Abstract of Entries page 74 et seq.

New Orleans Pacific Railway Co. to John Bennett, June 13, 1892, recorded in Book "C," page 775, records of Winn Parish.

Heirs of John Bennett to Thatcher & Barnum, April 24, 1893, recorded in Book "D," page 178, records of Winn Parish.

Thatcher & Barnum to Ruston State Bank May 13, 1902, Book "L," page 414, Conveyance Records of Winn Parish, La.

Ruston State Bank to N. D. Huie, June 12, 1902, recorded Book "L," page 415 Conveyance Records of Winn Parish.

N. D. Huie to Sulphur Timber & Lumber Co., July 21, 1903, recorded Book "L," page 740, Conveyance Records of Winn Parish, La.

Sulphur Timber & Lumber Co. to defendant by warranty deed duly of record in the Conveyance Books of Winn Parish.

Defendant avers that it has been in peaceable, open and uninterrupted and adverse possession of said land through itself and its said authors under title translativ of property for a period of more than ten years, and pleads the prescription of ten years in bar of plaintiff's action.

Further answering defendant shows that it has paid taxes, State and Parish, on said land for a period of four years, aggregating at least \$250.00, and defendant makes reconventional demand for the amount of said taxes with legal interest from the date on which they were paid in case defendant is evicted from said land.

Defendant avers that it bought said land by warranty deed from the Sulphur Timber & Lumber Company, a corporation organized under the laws of the State of Louisiana, and domiciled in Winn Parish, Louisiana; that it is entitled to call said Company in warranty to defend this suit and desires to do so.

Wherefore defendant prays that plaintiff take nothing by this suit and that his demands be rejected at his cost. Further prays that the Sulphur Timber & Lumber Company be duly served with a copy of the original petition and of this answer and call in warranty and cited to answer thereto, and that if any judgment be rendered in favor of plaintiff and against defendant, that defendant have the same judgment rendered over in its behalf against the said Sulphur Timber & Lumber Company, warrantor.

Further prays that in case there is judgment for plaintiff and against defendant, that defendant have judgment in reconvention against the plaintiff in the sum of Two Hundred and fifty (\$250.00) Dollars with interest for taxes, as alleged in the body of this answer. Prays for all orders necessary and proper and for general relief.

HENRY MOORE,

WHITE, THORNTON & HOLLOMAN,

Attorneys for Defendant.

Order.

Premises considered, let the Sulphur Timber & Lumber Co. be duly served and cited to answer in warranty according to law.

Done and signed in the absence of the Judge from the Parish this 15th day of March, A. D., 1910.

P. K. ABEL,

Clerk of Court.

Endorsed: Geo. W. Gray vs. #2845 Grant Timber & Mfg. Co.
Answer. Filed Mch. 15, 1910. S. M. Abel, Dy. C. D. C.

7 In the 5th Judicial District Court, Parish of Winn, State of Louisiana.

#2485.

GEORGE W. GRAY

vs.

GRANT TIMBER & MFG. CO., SULPHUR TIMBER & LUMBER CO.,
Warrantors.

Now into Court comes Sulphur Timber & Lumber Co., Warrantor herein, by undersigned counsel, appearing herein for the purpose of filing this exception, and reserving all rights to answer the merits of this suit, excepts to the call in warranty for the following reasons:

Mover shows that no legal and proper citation has been made on it as the law authorizes.

Wherefore they pray that this exception be filed and sustained and that plaintiff's call in warranty be dismissed and rejected at their cost. They pray for all general relief.

WALLACE & MOSS, Attorneys.

Endorsed: George W. Gray vs. #2485 Grant Timber & Mfg. Co., Sulphur Timber & Lbr. Co., Exception. Filed 3/29/10. P. K. Abel, C. D. C.

8 In Fifth District Court, Winn Parish, Louisiana.

No. 2485.

GEORGE W. GRAY

vs.

GRANT TIMBER & MFG. CO.

Now into Court comes defendant George W. Gray, through his undersigned counsel, and moves and prays the Court to strike out from the answer of defendant, the allegations with reference to the title in itself by certain chain of deed and transfers, and by the prescription ten years. Also the allegation with reference to the amount of taxes defendant Company has paid on land in question. Also the allegation with reference to its calling Sulphur Timber & Lumber Company in warranty; for the reason that this cause is a possessory action, and, under the law, defendant cannot set up title in itself by any means whatever; the question of title cannot be pleaded by defendant, tried or adjudged, neither can the question of taxes paid by defendant be pleaded, tried or adjudged; nor should defendant be permitted to make any call in warranty.

Mover further shows that defendant filed its answer herein out of term time, and secured from the Clerk of Court an order allowing

defendant to call Sulphur Timber & Lumber Co. in warranty and ordering service, and citation to be made on said warrantor.

Mover shows that this order, improperly and illegally issued, and same should be vacated, recalled, rescinded and revoked.

Wherefore, mover prays that this his motion "To Strike Out" be sustained; that the allegation with reference to title acquired by certain chain of deed; that the allegation with reference to defendant having acquired the land in question by prescription of ten years; the allegation with reference to the amount of taxes paid on said land by said defendant; the allegation with reference to the right of the defendant company to call Sulphur Timber & Lumber Co. in warranty all be struck out and not considered.

Mover further prays that the order herein issued allowing defendant to call Sulphur Timber & Lumber Co. in warranty, and ordering Sulphur Timber & Lumber Co. to be served and cited
9 in *in* warranty be recalled, vacated, rescinded and revoked.

Mover prays for general and equitable relief.

MATHEWS & GAMBLE,

Att'ys for Mover.

Endorsed: No. 2485. In Fifth District Court. Winn Parish, Louisiana George W. Gray vs. Grant Timber & Mfg. Co. Motion to Strike Out, and to Revoke an Order and Call in Warranty. Filed 3/29/10 Mathews & Gamble, Att'ys. P. K. Abel, C. D. C.

10 5th Judicial District Court, Parish of Winn, State of Louisiana.

#2485.

GEORGE W. GRAY

VS.

GRANT TIMBER & MFG. CO., SULPHUR TIMBER LUMBER CO.,
Warrantors.

Now into Court comes Sulphur Timber Lumber Co., warrantor herein, by undersigned counsel, appearing herein for the purpose of filing this exception, and reserving all rights to answer the merits of this suit, moves and prays your Honorable Court to dismiss plaintiff's petition and call in warranty filed by defendant for the reason that plaintiff's petition fails to disclose a cause of action.

Wherefore exceptors pray that this exception be filed and on trial hereof that it be sustained, and plaintiff's suit dismissed at their cost. They pray for all general and equitable relief.

WALLACE & MOSS,

Attorneys for Exceptors.

Endorsed: #2485. George W. Gray vs. Grant Timber & Mfg. Co. Exception. No Cause of Action. Filed 5/3/10. Wallace & Moss, Atty's petitioner. P. K. Abel, C. D. C.

11 5th Judicial District Court, Parish of Winn, State of Louisiana.

No. 2485.

GEORGE W. GRAY

vs.

GRANT TIMBER & MFG. CO.

In this cause comes defendant and represents that it has filed a separate suit to test ownership and title to the land and timber involved in this suit, a copy of the petition in said separate suit being hereto attached and made part hereof, for greater clearness, marked Exhibit "A."

Defendant avers that the question of title to the land and timber is paramount and should be first decided and that plaintiff has taken the position in this suit that it is a possessory action and the question of ownership and title cannot be passed upon, and that said position, though once overruled in this suit, will doubtless be again taken and urged.

Defendant shows that there are federal questions involved in this suit concerning the interpretation of the New Orleans Pacific Railway grant; and that any judgment which might be rendered in this suit in favor of plaintiff for the value of timber cut and removed, without first requiring plaintiff to prove his ownership of same, and of the land on which it stood, would be a taking of defendant's property without due process of law, and contrary to the Constitution and laws of the United States and of the State of Louisiana and that if the articles of the Code of Practice of Louisiana mean that recovery may be had by plaintiff for the value of timber without first proving ownership, that such Articles and laws are unconstitutional and violative of the Constitution of the United States, and particularly of Amendment 14 Sec. 1 of said Constitution; and also Article 2 of the Constitution of the State of Louisiana.

Defendant shows, therefore, that all proceedings in this cause should be stayed until there has been a fixed adjudication upon the question of title to the land and timber involved in this suit.

12 Wherefore, defendant prays that proceedings in this suit be stayed until there has been a final adjudication upon the question of title and property involved in this suit, which questions have been presented for adjudication in the suit of Grant Timber & Manufacturing Company vs. George G. Gray No. — on the docket of this Court, and for general relief.

HENRY MOORE,

H. H. WHITE,

Attorneys for Defendant.

Order.

After hearing upon the foregoing motion in open Court, it is ordered that all proceedings in this suit be stayed until final adjudi-

cation is had on the question of title presented in the suit of Grant Timber & Mfg. Co. vs. George W. Gray No. — on the docket of this court, and until further ordered.

Thus done and signed in Open Court this — day of — A. D., 1911.

— — —, Judge.

13

EXHIBIT "A."

5th Judicial District Court, Parish of Winn, State of Louisiana.

No. —.

GRANT TIMBER & MANUFACTURING CO.

vs.

GEORGE W. GRAY.

To the Honorable the Judge of the Fifth Judicial District Court in and for the Parish of Winn, State of Louisiana:

The petition of the Grant Timber & Manufacturing Company, a corporation organized under the laws of the State of Arkansas, domiciled at Texarkana, in the State, and having as its selected place of service Minden, Webster Parish, Louisiana, where it is represented for purpose of citation by E. E. Fitzgerald, and herein acting and represented by its President, William Buchanan, with respect represents that it owns by good and valid title the Southeast (SE $\frac{1}{4}$) quarter of Section Twenty-five (25) Township Ten (10) North, Range Three (3) West, in Winn Parish, Louisiana; and that said property is worth the sum of Four Thousand (\$4000.00) Dollars.

Petitioner further represents that it owns said property by virtue of the following chain of title duly of record in the Conveyance Books of Winn Parish, Louisiana, viz:

United States to New Orleans Pacific Ry. Co., selected Dec. 28, 1883, under Act March 3, 1871, New Orleans Abstract of entries pages 74 et seq.

New Orleans Pacific Railway Co. to John Bennett, June 13, 1892 recorded in Book "C" page 775, records of Winn Parish.

Heirs of John Bennett to Thacher & Barnum April 24, 1893, recorded in Book "D" page 178 Records of Winn Parish.

Thacher & Barnum to Ruston State Bank May 13, 1902 Book "L" page 414 Conveyance Records of Winn Parish.

Ruston State Bank to N. D. Huie June 12, 1902, recorded Book "L" page 415 Conveyance Records of Winn Parish.

N. D. Huie to Sulphur Timber & Lumber Co., July 21, 1903, recorded Book "L" page 740, Conveyance records of Winn Parish, Louisiana.

14 Sulphur Timber & Lumber Co. to plaintiff by warranty deed duly of record in the Conveyance Books of Winn Parish.

Petitioner avers that under said title it has owned said property through itself and authors ever since Dec. 28, 1883, and has had such possession as flows from legal title translative of property duly re-

corded, accompanied by ranging the land, cutting timber and paying taxes thereon.

Plaintiff avers that George W. Gray, a resident of Winn Parish, Louisiana, claims to own and possess said property by virtue of being the assignee of an actual settler on same prior to the location of the New Orleans Pacific land grant, though plaintiff denies that said Gray either owns or possesses same.

Plaintiff further avers that said Gray in suit No. 2485 on the docket of this Honorable Court, entitled George W. Gray vs. Grant Timber & Manufacturing Company has sued plaintiff in an action of trespass for timber cut and removed by defendant from said land and will doubtless try to prevent an adjudication upon the question of title to same in that suit on the ground that said suit No. 2485 is possessory in its nature.

Plaintiff shows that the question of title is paramount and should be first decided, and that the question of ownership of the timber and recovery for its value should be first decided and that proceedings in said suit No. 2485 should be stayed until said questions have been decided in this suit, and that the plaintiff in this suit, who is defendant in said suit No. 2485, is filing a motion praying for stay of proceedings in that suit, until this suit has been finally decided.

Plaintiff shows that there are Federal questions involved in this suit concerning the interpretation of the New Orleans Pacific Railway grant, and that any judgment which might be rendered in this suit in favor of defendant for the value of timber cut and removed without first requiring defendant to prove his ownership of same, and of the land on which it stood, would be a taking of plaintiff's property without due process of law, and contrary to the

15 Constitution — laws of the United States and of the State of Louisiana, and that if the Articles of the Code of Practice of Louisiana Nos. 46-60, inclusive, or any other law or laws of Louisiana mean that recovery may be had by plaintiff for the value of timber without first proving ownership, that such articles and laws are unconstitutional and violative of the Constitution of the United States, and particularly of amendment 14 Sec. 1 of said Constitution; and also of Article 2 of the Constitution of the State of Louisiana.

Wherefore, plaintiff prays that defendant, George W. Gray, be served with a copy of this petition and cited to answer and that after legal delays and due proceedings had there be judgment decreeing the petition- to be the owner of the property described in the body of this petition, and to have been the owner of the timber cut and removed by it therefrom, and be placed in possession and quieted in its ownership and title and possession to said land and timber; and that all proceedings in suit No. 2485 be stayed until this case is finally decided, and for all orders necessary and proper and for general relief and costs.

HENRY MOORE,

H. H. WHITE,

Attorneys for Petitioner.

Endorsed: #2485 5th Juedl. Dist. Ct. Grant Psh. La. Geo. W. Gray vs. Grant Timber & Mfg. Co. Motion to Stay Proceedings. Filed May 16th, 1911. S. M. Abel, D'y C. D. C. Henry Moore, H. H. White, Att'ys for Def't.

16 In Fifth Judicial District Court, Parish of Winn, State of Louisiana.

No. 2485.

GEO. W. GRAY

VS.

GRANT TIMBER & M'F'G CO.

Note of Evidence Taken on Trial in the Above Styled and Numbered Cause in the Fifth Judicial District Court, Parish of Winn, State of Louisiana.

Honorable George Wear, Judge.

Mathews & Gamble, Attorneys for Plaintiff; White, Thornton & Holloman, Attorneys for Defendant; Wallace & Moss, Attorneys for Warrantors.

GEORGE W. GRAY, sworn in his own behalf, testifies as follows:

Q. Mr. Gray, you are plaintiff in this case, are you not?

A. Yes, sir.

Q. You have alleged in the petition that you are the possessor of the following described land; Southeast Quarter of Section Twenty-five, Township Ten, North Range Three West. State whether or not you are in possession of that land, Mr. Gray?

A. Yes, sir, I am.

Q. You live on it?

A. Yes, sir.

Q. What family have you?

A. I have a wife and four children with me now.

Q. Is any of this land in cultivation?

A. Yes, sir.

Q. About how much of the land have you in cultivation?

A. I suppose about thirty acres.

Q. About how long have you been in possession of it, Mr. Gray?

A. I moved there the first of January, 1889, and have been there ever since.

Q. Who did you get it from, Mr. Gray?

A. I bought it from J. M. Hanchey.

This testimony and all testimony relative to the acquisition of the land involved in this suit by plaintiff and by his authors is objected to, First: Because real estate cannot be transferred or title to same acquired except by a written instrument; Second: Because

17 there is no allegation in the petition setting forth who plaintiff's authors in title are, and such title cannot be proven un-

less alleged. This objection made general to apply to all testimony of this kind in this suit.

Evidence admitted subject to objection.

Q. Mr. Gray, since you have been on this land, have you possessed it as owner, renter or otherwise?

A. As owner.

Q. Has anybody disputed your possession of that land, Mr. Gray?

A. No, sir, except by cutting the timber. Nobody has tried to get me off.

Q. Was any timber cut from the land?

A. Yes, sir.

Q. Who cut the timber?

A. The Selma people.

It is admitted that the defendant, Grant Timber & Manufacturing Company, went upon the land involved herein during the month of February, 1910, and cut therefrom two hundred and seventy-five thousand (275,000) feet of Pine timber, and thirty thousand (30,000) feet of Oak timber.

It is admitted that this timber is worth \$3.50 per thousand feet.

Q. Mr. Gray, were you in possession of this land or not at the time this timber was cut?

A. Yes, sir, I was.

Q. Have you or not cultivated the open land each year since 1899?

A. Yes, sir.

Q. Did you ever make any protest or ask the Grant Timber & Mfg. Co. not to cut the timber on this land?

A. Yes, sir, I asked them not to cut it.

Cross-examined.

(By Mr. WHITE:)

Q. Mr. Gray, how much of the Southeast Quarter of Section Twenty-five have you under fence?

A. I suppose about forty acres, just guessing at it.

Q. Which forty of the 160 acres in question is that clearing on?

18 A. There is a little of it on all four of them.

Q. On which forty is the principal portion of the clearing?

A. I don't know as I could give the numbers of the forty. The most of it is on the Southeast forty.

Q. About how much clearing have you in the Northeast forty—about how much of your field is in that forty?

A. There is very little clearing on that forty. I suppose there is six or seven acres on that forty—clearing and woodland together.

Q. About how many acres have you in your field on the Northwest forty?

A. That is the one I spoke of that has seven or eight acres on the northeast forty—of open land.

Q. How much open land in the Northwest forty?

A. There is very little.

Q. Will you say there is as much as one acre?

A. Yes, sir, about that.

Q. About how much is there in the Southwest forty?

A. I suppose there is about—I will say there is nine acres, just guessing at it.

Q. Then that would leave about twenty-two acres in the Southeast forty, wouldn't it?

A. Yes, sir.

Q. What is the character of the Pine on which the Grant people did their cutting? Its general description—was it good Pine, bad or cutover, or how?

A. I suppose it was average timber. I am a very poor judge of timber.

Q. Well, it was what you call virgin timber, wasn't it?

A. I suppose so.

Q. It had not been picked over or cut over, had it?

A. No, sir, not more than a little rail timber cut out of it, was all.

Q. I suppose there was not much of that cut out of it, was there?

A. I suppose there was a good deal in time.

Q. Had you cut much rail timber on it?

A. Not a great deal, I have cut some.

19 Q. Mr. Gray, you say you are in possession of the Southeast Quarter of Section Twenty-five. What sort of possession, if any, did you have except by having a clearing and field?

A. Well, I bought and paid for the claim. I paid something for the claim that was on there before I went there.

Q. I am not talking about what title you had, but I am talking about what possession you had of it?

A. I don't understand you possibly. I don't know except my being on it, cultivating and living on it is all the possession I know of.

Q. You are on and cultivating your field and inclosure, are you not?

A. Yes, sir, I have cleared up some in there.

Q. Then, as a matter of fact, have you been, at any time since the filing of this suit the year prior to that, in any other kind of possession than that which you have just named?

A. Not that I remember of. Possession? I don't understand it.

Q. I want to be perfectly honest with you, Mr. Gray, and I will state to you in explanation of my question, that I intend to urge that, unless you can show actual possession of the whole 160 acres, you are not entitled in any event to recover any portion except what you show is in your actual possession. Now, I will ask you if you have *have* had, since a year previous to the filing of this suit, any sort of possession of this land other than that which you have already stated? I have been told you are a fair man, and I am going to treat you as such.

A. I suppose I had a claim on the whole 160 acres, that is what I am contending for, at least.

Q. You can't state any other acts of possession except what you have already stated, can you?

A. I don't know whether I could or not.

Q. Mr. Gray, of the timber which was cut by the Grant Timber & Mfg. Co., defendants in this suit, how much was cut from the forty acres constituting your field or clearing or inclosure?

A. I don't know just how much.

Q. Was any great portion of it cut out of your field?

A. No, not a great deal, not over a hundred trees, possibly.

20 Q. Mr. Gray, did you or not propose to buy this Southeast Quarter of Section Twenty-five from the Sulphur Timber & Lumber Co. before the Sulphur Timber & Lumber Co. sold it to the Grant Timber & Mfg. Co.?

A. I did. I contracted with Mr. Crain, but they didn't do what they promised to do consequently we didn't trade—I never got any deed to it.

Q. Mr. Gray, when you speak of Mr. Crain, I suppose you mean the Mr. Crain who was the land man and who represented the Sulphur Timber & Lbr. Co.?

A. Yes, sir.

Q. About when was it that you agreed with Mr. Crain for the purchase of this quarter section, and which you say was not carried out?

A. I don't remember the day, it was just before the trade was closed between the two Companies.

Q. I am told the trade between the two Companies was made in 1906. Was it along about then?

A. I don't know, it was just before they made the trade.

Q. You would be safe in saying it was some time during the year 1906?

A. I wouldn't say what year it was, but I suppose it was about then.

Q. The agreement was had with Mr. Crain, was it?

A. Yes, sir.

Q. Mr. Gray, did you not at one time make application to the United States Government to homestead some land?

A. I did.

Q. When was that?

A. I suppose it has been about ten years ago, I don't remember the date of that even.

Q. You made the usual homestead affidavit, did you not?

A. Yes, sir.

Q. What land did you apply to homestead?

A. The land I found out later was in Iatt Lake, seven miles this side of Colfax. I couldn't do anything with it, it was all in the lake except a few acres and it was wore out.

21 (By Mr. Moss:)

Q. Mr. Gray, I will ask you to examine map marked Def't- "A" for identification, and state whether or not that represents the 160 acres of land claimed by you, and the cleared land marked thereon?

A. I think that cleared land is on the Northwest Forty.

Q. What I want to know, does that represent the cleared land you have on the 160 acres?

A. It does pretty well.

Q. Does the mark indicating the house represent about the location of your house on the 160 acres of land?

A. Yes, sir.

Q. And the part of the map encircled with a line and marked field, does that indicate about the location of the field on the 160 acres of land?

A. I think it does pretty well, as far as I understand about the land business. That does very well. That is the cleared land. You mean the cleared land in the Northwest Forty?

Q. Yes.

A. It ought to be further south than it is. That is my opinion about it I might be wrong.

Q. I will ask you, Mr. Gray, aside from having that field enclosed and cultivating it each year, what other act of possession have you done on any other part of that land, outside of the field and enclosure?

A. I don't know that I understand. I have not done anything else outside of that on it.

Q. That is what I am trying to ascertain, whether you have done anything else outside of the enclosed field to denote your possession of the land beyond the fence?

A. That's all I have done.

Q. You mean by that you have not done anything outside of the enclosed land?

A. Yes, sir.

Defendants offer map of the S. E. $\frac{1}{4}$ of Section 25, Tp. 22 10 N. R. 3 West, marked Def't- "A" for identification, said map having just been identified by witness G. W. Gray.

It is admitted that the amount of timber cut by defendant in Mr. Gray's enclosure is Twenty Thousand (20,000) Feet.

Q. Mr. Gray, you stated that you agreed to buy this land at one time from Mr. Crain?

A. Yes, sir, we made a verbal contract.

Q. Did that include the land and timber or just the land?

A. All except the best White Oak and Pine. They didn't complete that contract—they didn't make me a deed, so that trade was all forfeited and was never made.

Q. Did you agree on the price you were to pay him for it?

A. Yes, sir.

Q. How much was it?

A. He told me he would let me have it for \$3.00 per acre. I was to pay \$50.00 for the deed and the balance whenever I felt like it, and I came up here twice to see about it. The first time I talked with Mr. Hodge and he said he couldn't do anything, but for me to come back the next Wednesday and see Mr. Robertson, the bookkeeper, and tell him what I had told him and he would tend to it for me. I came back Wednesday and saw Mr. Robertson, and he said he

couldn't do anything for me at all. I made up my mind right then that I would go back and stay there until I lost or gained it. I asked Mr. Pope about it, and he said he thought that the Sulphur Timber & Lbr. Co. had made the deed over — the Grant Timber & Mfg. Co.

Q. Was that before or after the timber had been sold?

A. It was just before the trade was closed between the two companies.

Q. Now, you say you spoke to Mr. Pope about it after the Grant Timber & Mfg. Co. bought it?

A. I spoke to Mr. Pope about it, but he didn't know that the deed had been made, he wasn't present when it was made, but he rather thought they made the deed.

Q. You did come down twice to get a deed from the Sulphur Timber & Lbr. Company?

23 A. Yes, sir, I talked to Mr. Hodge about it the first time, and the second time I talked to Mr. Robertson about it, and he said he couldn't do anything for me at all.

Q. Mr. Gray, did you file this suit before or after this timber was cut by the Grant Timber & Mfg. Co.?

A. Before. Before any timber was cut at all. They commenced to cut it and I went to the man that was scaling and asked him to quit.

Q. Did you make any arrangements with any one besides your attorney to bring this suit and to assist you in the trial of this case by which you agreed to give an interest in this homestead, or a certain per cent. of whatever might be received?

Objected to as immaterial and inadmissible. Testimony admitted subject to objection.

A. I have a contract.

Q. Who is the contract with?

A. Mr. Mathews and Mr. Gamble.

Q. Anybody else?

A. Mr. Simmons is possible- known in it.

Q. What interest have you agreed to give, Mr. Gray?

Objected to for the reason that the written contract is the best evidence.

Counsel for plaintiff agrees to produce the contract under the supposition that the contract can be found in the files of their office, over the protest made by counsel for plaintiff.

Redirect examination.

Q. Mr. Gray, on cross examination you were asked about what acts of possession you had done relative to the land outside of your enclosure. I will ask you whether or not all the land embraced and described in this petition was acquired by you from Mr. Hanchey?

A. Yes, sir.

Q. And is that or not the reason you claim possession of the whole 160 acres?

A. Yes, sir.

Q. They asked you on cross examination, Mr. Gray, about
24 a proposed sale from Sulphur Timber & Lumber Co. represented by Mr. Crain, to you of this land. Just state what brought that about?

A. Well, they were talking to me about—That first started when they talked to me about renting me the land if I wanted to stay there.

Q. Were you there already?

A. Yes, sir, I had been there for some time.

Q. Did you know anything about a dispute over the title to this land? You claimed it and you knew they claimed it?

A. Yes, sir. He proposed to rent it to me, but I didn't want to rent it, I wanted a home all my own, and I told them that I would just get off if I had no right to it—

Q. Was it settled in your mind at that time whether you had a right to it or not?

A. Yes, sir, of course. I thought I had a right to it.

Q. You knew that the Sulphur Timber & Lumber Co. was claiming it?

A. Of course I did.

Q. What was said and done between you and Mr. Crain—was that done in the nature of a compromise over the dispute over the diverse claims?

A. Yes, sir.

Q. That sale was never perfected?

A. No, sir, I made up my mind to contend for the whole thing—not to go any further about buying it, and I never said anything more to them about it.

Plaintiff rests.

It is admitted that the chain of title set up in defendant's answer is true and correct, to-wit: United States to New Orleans Pacific Railway Co. under selection of December 28th, 1883, under Act of March 3rd, 1871, New Orleans Abstract of Entries, page 74 et seq. Recorded in Conveyance Book —, page —, Records of Winn Parish.

New Orleans Pacific Railway Company to John Bennett, June 13th, 1892, Recorded in Book "C", page 775, Records of Winn Parish.

Heirs of John Bennett to Thatcher & Barnum, April 24th, 1893, recorded in Book "D", page 178, Records of Winn Parish, Louisiana.

25 Thatcher & Barnum to Ruston State Bank, May 13th, 1902, Book "L", page 414, Records of Winn Parish, Louisiana.

Ruston State Bank to N. D. Huie, June 12th, 1902, Recorded in Book "L", page 415, Conveyance Records of Winn Parish, Louisiana.

N. D. Huie, to Sulphur Timber & Lumber Company, July 21st, 1903, Recorded in Book "L", page 740, Conveyance Records of Winn Parish, La.

Sulphur Timber & Lumber Co. to Grant Timber & Manufactur-

ing Company, by warranty deed, dated July 12th, 1907, Recorded in Book "Q", page 765, Records of Winn Parish, Louisiana.

All of which offerings are objected to for the reason, that this being a possessory action, the question of title is not involved and is not admissible under the pleadings.

(By the COURT:) Offerings admitted for the purpose of showing good faith.

Subject to same objection and same ruling, it is admitted that the Grant Timber & Mfg. Co. have paid taxes on the Quarter Section involved in this suit since the year 1907 aggregating \$14.52, and that the Sulphur Timber — Lumber Co. paid taxes on same from the year 1903 until the year 1907, aggregating \$18.50.

It is admitted, subject to objection, that plaintiff has never paid any taxes on the land involved in this suit.

J. E. CRAIN, sworn on the part of the defendant and warrantor testifies as follows:

(By Mr. Moss:)

Q. Mr. Crain, what position do you hold, or did you hold with the Sulphur Timber & Lbr. Co. at the time they were operating in the town of Winnfield?

A. I was land and timber agent.

Q. As land and timber agent, what were your duties?

A. To look after the land and timber, and buy and sell.

Q. I will ask you whether you have and did at the time you were holding this position with the Sulphur Timber & Lbr. Co. examine the Southeast Quarter of Section 25, Township 10 North, Range 3 West?

A. I did.

Q. Are you familiar with the location of this land and the improvements situated thereon?

At this point it is admitted by attorneys for plaintiff that the map filed in evidence and marked Deft. "A" is a correct representation of the land, houses and enclosed field situated thereon.

Q. Mr. Crain, I will ask you whether or not you ever had an agreement with Mr. G. W. Gray to sell him this land?

Objected to for the reason the agreement was in the nature of a compromise over a disputed title. Objection overruled and bill reserved.

Q. Mr. Crain, was that agreement an act of compromise as testified to by Mr. Gray?

A. I don't know anything about that, the title was unquestionable at that time to that land, and as I understood it there was no compromise about it. There was a verbal sale made to the land at \$3.00 per acre. \$50.00 down and the balance to be paid as he could get it.

Q. Did that include the timber?

A. No, sir.

Q. When was that agreement made? Before the sale to the Grant Timber & Mfg. Co. by the Sulphur Timber & Lumber Co.?

A. Yes, sir.

Q. Do you know why the agreement made between you and Mr. Gray was not carried out and the deed made to him?

A. Because when the Sulphur Timber & Lumber Co. sold out to the Grant Timber & Mfg. Co. there was no deed on record from the Sulphur people to Mr. Gray. I tried to get it in, but I couldn't.

Q. You tried to arrange it so that Mr. Gray could get the land?

A. Yes, sir, when Mr. Pope and I estimated the timber I told him that the land was sold to Mr. Gray and we did not include it, we just took the timber and left the land the same as we did other timber where we didn't own the land.

Cross-examined:

Q. Mr. Crain, this proposed sale to Mr. Gray was never perfected, was it?

27 A. No, sir.

Q. You would not state for certain what motive moved Mr. Gray to make that agreement?

A. No, sir, I don't know, only that he said he didn't want to rent and had rather buy it.

Q. You knew he was on this land and cultivating it?

A. Yes, sir.

Q. Don't you know that he claimed to own it?

A. No, sir, he didn't claim to own it, because he wanted to buy it.

Q. That is the only reason you have for saying that he didn't claim it?

A. That is the only reason I know.

Q. All this took place some time before the timber was cut?

A. Inside of a year before the deal was made with the Grant Timber & Mfg. Co.

Q. What year was this?

A. I think it was some time during 1905 perhaps, I am not positive about dates.

Redirect examination.

(By Mr. Moss:)

Q. Before cutting this timber you say you made the agreement to sell the land to Mr. Gray. I will ask you whether or not you were frequently on the land and at Mr. Gray's place?

A. Yes, sir.

Q. Did you or not use Mr. Gray's place as a stopping place when in that community?

A. Frequently.

Q. At the times you were there did Mr. Gray ever make known to you that he had any claim to this land at all?

A. Not that I remember.

Q. The conversations you had with him was about the purchase of the land?

A. Yes, sir.

It is admitted that the Southeast Quarter of Section 25, being the land in question in this suit, in cutting the timber which has
28 been cut therefrom by defendant and the timber which remains standing on the land is worth more than Two Thousand Dollars.

Defendant closes.

G. W. GRAY, recalled in rebuttal.

Q. Mr. Gray, you stated that you claimed all this land and all the timber and that you knew the Sulphur Timber & Lumber Co. claimed it one time also?

A. Yes, sir.

Q. Just state your motive and purpose in having this talk about buying it from Mr. Crain?

Objected to for the reason that Mr. Gray's motive and purpose in reference to the proposed purchase from the Sulphur Timber & Lumber Co. is not competent evidence unless brought home to the defendant and warrantor in this suit.

Evidence admitted subject to objection.

A. It first started out by him proposing to rent me the land, and I told him if I had to rent it I would leave and he says: "I want you to have the land, you have got a pretty good start here, nice orchard and everything, and I will make arrangements with the Company to sell you as much as you want, forty, sixty or a hundred and forty acres," and I told him if he could get a good deed that was a good warranty deed to it for me that I would do that. I was to pay him \$3.00 per acre for the land. I was to pay him \$50.00 for the deed and the balance when I could, in case I would not file and go into a law suit, and I didn't think at that time I didn't have the money to go into a law suit, and so he made the arrangements through the Company and came back and told me.

Q. Were you or not claiming the land at that time?

A. Yes, sir, I was claiming it, of course I was claiming it.

Q. State whether or not you thought it would take a law suit to settle that?

A. Yes, sir, I did.

29 Q. What induced you to make this offer, Mr. Gray, to buy the land? Was it because you didn't think you owned the land, or because you wanted to avoid a law suit?

A. It was because I wanted to avoid a law suit. I wanted a home and if I could get it for \$50.00 I thought it would likely be lighter on me than to go into a law suit, but I didn't get the deed, consequently it was all forfeited.

Cross-examination.

(By Mr. Moss:)

Q. Mr. Gray, did you state on direct examination that you had made a homestead application?

A. Yes, sir, I made one and then cancelled it for the fact it was all in the lake and I couldn't do anything with it?

Q. When did you make this homestead application?

A. Before I agreed to buy this land.

Q. When?

A. Ten years ago.

Q. While you were living on the land involved in this suit?

A. Yes, sir.

Q. When was this application cancelled?

A. As soon as I found where it was, it was all in the lake except about fifteen acres and it was wore out.

Q. You are well acquainted with Mr. Crain?

A. Yes, sir.

Q. Did he stop at your house frequently?

A. Yes, sir, he stopped there.

Q. He and you discussed this land considerably?

A. Yes, sir, we talked a whole lot about it.

Q. And you agreed to pay him \$3.00 an acre for 160 acres?

A. For 160 acres, I was to pay him \$50.00 for the deed and the other I was to pay when I could, there was no set time or fixed way about paying that.

Q. You were to pay \$3.00 per acre that would be \$480.00 for the 160 acres?

A. Yes, sir.

30 Q. \$50.00 when he made you the deed, and the balance at such time as suited your convenience?

A. Yes, sir, while I didn't get the deed and the trade was all forfeited and didn't amount to anything.

Q. Mr. Crain did what he could to get you the deed?

A. I suppose he did, he said he did, that is all I know about it.

Q. You talked to Mr. Hodge, the President of the Sulphur Timber & Lbr. Co. about the deed?

A. Yes, sir.

Q. And he told you to see Prof. Robertson, the bookkeeper about it?

A. Yes, sir, he told me to come back the next Wednesday and tell Mr. Robertson exactly what I told him and that he would fix it up for me, he said he wouldn't be here himself. I came back and Mr. Robertson said he couldn't do anything for me, and didn't tell me to come back.

Q. He didn't tell you any reason why he couldn't do anything for you?

A. No, sir.

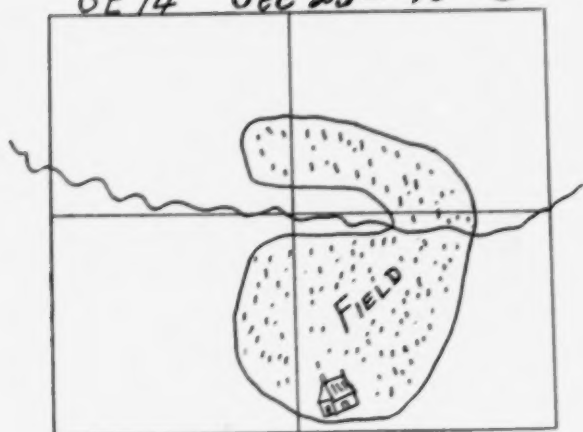
Counsel for plaintiff having produced the written contract between G. W. Gray, the first party, and Mathews & Gamble and J. Russel Simmons, the second party, the said contract is now offered by defendants as testimony in this case, with leave to substitute a certified copy, said contract being marked Deft. "B" for identification.

Objected to for the reason it is wholly immaterial and inadmissible. Admitted subject to objections.

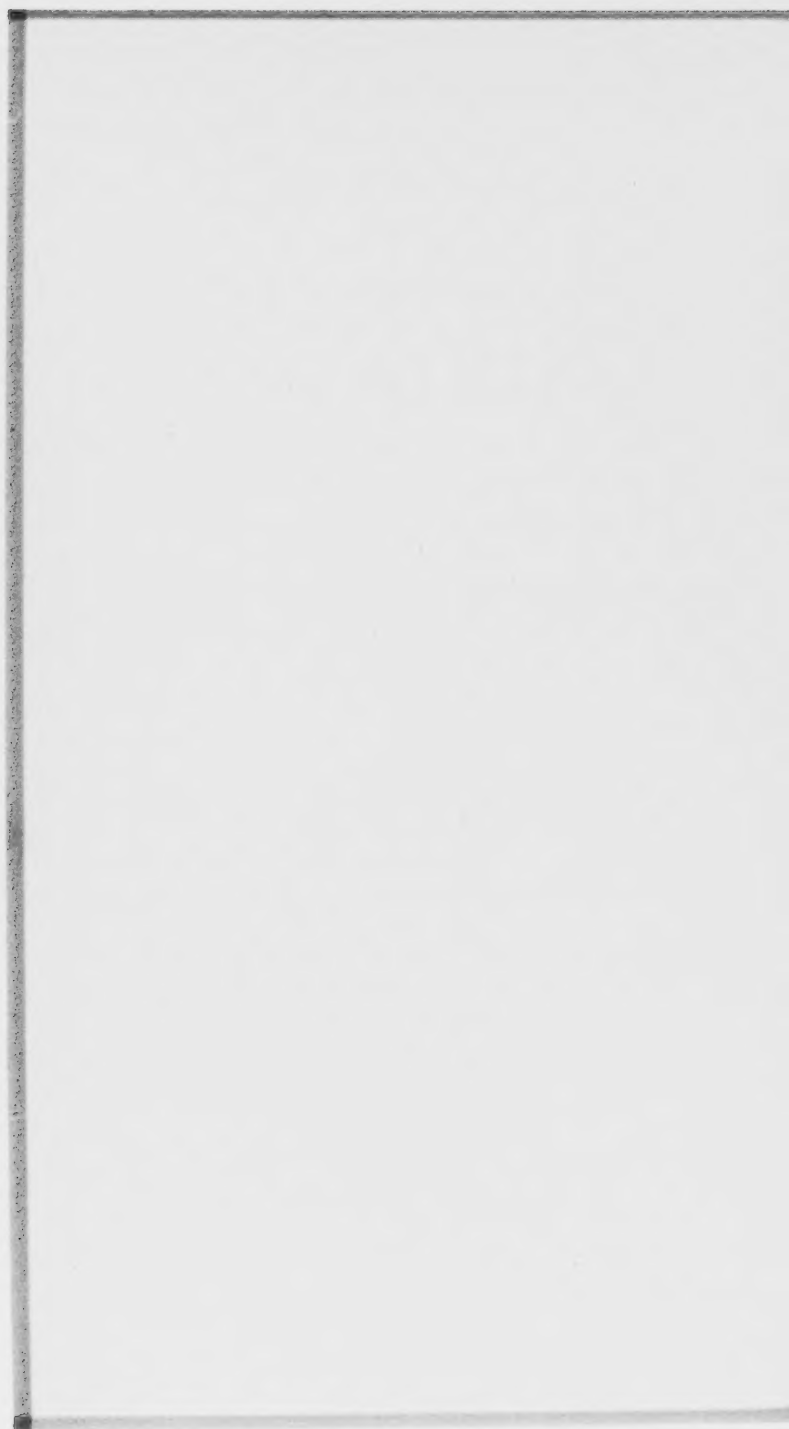
Evidence closed.

(Here follows diagram marked page 31.)

SE 1/4 Sec 25-10-3



[Endorsed:] Def't "A" Filed in evidence Nov. 28th, 1911.
S. M. Abel, D'y C. D. C.



32 STATE OF LOUISIANA,
Parish of Winn:

This agreement and contract entered into on this the 10th day of February, 1910, by and between Geo. W. Gray, hereinafter referred to as the first party, and Mathews and Gamble and J. Russell Simmons, hereinafter referred to as the party of the second part;

Witnesseth: the said first party being a claimant and in possession of S. E. $\frac{1}{4}$ of Sec. 25 Tp. 10 N. R. 3 W., located in the Parish of Winn, State of Louisiana, and whereas the Grant Timber & Mfg. Co. likewise lays claim to said described property, particularly the timber thereon, and that the said Company is about — depredate on the property of the party of the first part, and cut and remove therefrom the pine and oak timber: Now, therefore, in consideration of the agreement and stipulations hereinafter undertaken by the parties of the second part, the first party binds and obligates himself to remunerate the second parties for services rendered as hereinafter agreed, to pay the second parties 35% *per cent* of the amount of any recovery had from the said trespassing Companies; and if the said second parties can so conclude any litigation taken between the first party and the said Trespassing Company, claiming to own the land or timber, that the said first party shall be left in undisturbed and undisputed possession of the land and timber, or either herein claimed by the said first party, then and in that event the said second party shall receive the said 35% *per cent* of the value of the property so finally recovered, in cash, or an undivided 35% *per cent* interest in the said described property, at the option of the first party; and the said first party agrees to advance all costs of any litigation undertaken in his behalf.

In consideration of the agreement and obligation herein taken by the said first party, the second party agrees and contracts to prosecute the necessary litigation against the adverse claimants and trespassing Companies diligently, and it is agreed that if a compromise shall appear to be the best interests of the first party
33 then and in that event the second party shall have the right to negotiate the said compromise and shall be entitled as aforesaid to 35% *per cent* of any recovery as compensation for services rendered.

In witness whereof we have hereunto appended our signatures on this the 10th day of February, 1910, at Winnfield, Louisiana, in the presence of the undersigned attesting witnesses, of competent age.

G. W. GRAY,

The First Party.

MATHEWS & GAMBLE.

J. RUSSELL SIMMONS.

Attest:

J. S. COLLINS.

Endorsed: Def't "B" Filed in evidence Nov. 28, 1911. S. M. Abel, D'y C. D. C.

34 5th Judicial District Court, Parish of Winn, State of Louisiana.

#2485.

GEORGE W. GRAY

vs.

GRANT TIMBER & MFG. CO., SULPHUR TIMBER & LUMBER CO.,
Warrantors.

Now into Court comes warrantors, by undersigned counsel, and for answer to plaintiff's demands and the call in warranty filed by defendants, denies each and every allegation contained in plaintiff's petition except such as may be herein specially admitted.

Warrantors admit the sale made by them to the Grant Timber & Mfg. Co. of the property described in plaintiff's petition. They admit further having acquired said described property from N. D. Huie, and having acquired any and all rights from him that this vendors transferred thereto.

Respondents specially deny plaintiff's possession of said described property or their right of possession in any manner whatever, but aver that they have been in peaceable, open and undisturbed and adverse possession of said land and timber through itself and its authors under title translativ of property for a period of more than ten years, and pleads the prescription of ten years to plaintiff's petition.

Respondents further specially deny that the Grant Timber & Mfg. Co. cut and removed timber from said described land to the value of the amount alleged by plaintiff, and further that said land and timber is worth the amount alleged by plaintiff.

Respondents further answering aver that it has paid the taxes both Parish and State, on the land and timber for a period of five years, aggregating Three Hundred (\$300.00) Dollars, and they make reconventional demand for the amount of said taxes, with legal interest from date on which they were paid, in the event defendants are evicted from said land.

35 Wherefore respondents pray that plaintiff's demands be rejected at his cost and that he take nothing by this suit. They further pray that in case there be judgment for plaintiff and against defendant, that your respondents have judgment in reconvention against plaintiff in the sum of Three Hundred (\$300.00) Dollars, with interest for taxes from the date same were paid as alleged in this answer. Further pray for all orders necessary and proper and for general and equitable relief.

WALLACE & MOSS,
Attorneys for Warrantors.

Endorsed: #2485. Geo. W. Gray vs. Grant Timber & Mfg. Co., Sulphur Timber & Lumber Co., warrantors. Ans. Filed November 28, 1911. S. M. Abel, D'y C. D. C.

36

5th Jud'l D. C., Winn P'h, La.

#2485.

GEORGE W. GRAY

vs.

GRANT TIMBER & MFG. CO.

In this cause comes defendants and warrantors and plead that plaintiff is estopped from prosecuting or recovering in this suit for the following reasons:

1. Because he admitted that he had no title or ownership of the land in question by trying to buy it from the Sulphur Timber & Lumber Co.

2. Because he filed a United States Homestead application, with the usual affidavit, to enter certain other lands, after he began to reside on the land involved in this suit.

Wherefore appearers pray that this plea of estoppel be sustained and plaintiff's demands rejected at his cost.

HENRY MOORE,

WHITE & THORNTON & HOLOMAN,

Attorneys for Defendant.

WALLACE & MOSS, *Att'ys for Warrantors.*

Endorsed: Geo. W. Gray vs. Grant T'b'r & Mfg. Co. Plea of Estoppel. Filed Nov. 28, 1911. S. M. Abel, D'y C. D. C.

37

In Fifth District Court, Winn Parish, Louisiana.

No. 2485.

GEORGE W. GRAY

vs.

GRANT TIMBER & MFG. CO.

Now comes George W. Gray, plaintiff, herein and shows the Court that he is aggrieved by the judgment herein rendered in the forenoon of the 29th day of November, 1911, and signed in the afternoon on the 29th day of November, 1911, in this cause; that the said judgment is contrary to the law and evidence, and that mover desires to appeal devolutively therefrom to the Supreme Court of the State of Louisiana.

Wherefore, he prays for an order of appeal, returnable to the Supreme Court of the State of Louisiana.

Prays for gernal relief.

MATHEWS & GAMBLE.

Attorneys for Mover.

Order.

The foregoing motion for an appeal from the judgment herein rendered having been filed in open Court, in the presence of both counsel for plaintiff and counsel for defendant:

It is ordered that a devolutive appeal be granted to the said George W. Gray, plaintiff, returnable to the Supreme Court of the State of Louisiana on the 2nd day of Jan. 1912 upon Mover furnishing bond with good and solvent security, in the sum of One Hundred Dollars.

This done ordered and signed in open Court, and in the presence of both counsel for plaintiff and counsel for defendant, on this the 29th day of November, A. D. 1911.

GEO. WEAR,
Judge of 5th District Court.

Endorsed: No. 2485 In Fifth Dist. Court, Winn Parish, Louisiana. Geo. W. Gray vs. Grant Timber & Manufacturing Co. Motion for Appeal. Filed Nov. 29, 1911. S. M. Abel, D'y C. D. C.

38 In Fifth Judicial District Court, Winn Parish, Louisiana.

No. 2485.

GEORGE W. GRAY
vs.
GRANT TIMBER & MANUFACTURING CO.

This cause coming on for trial pursuant to assignment by reason of the law and evidence being in favor of plaintiff and against defendant:

It is ordered, adjudged and decreed that the plaintiff do have and recover of the defendant the sum of Seventy (\$70.00) Dollars with legal interest from date until paid, and that he be quieted in his possession of the forty acres, more or less, actually occupied by him and included in his field and under fence, and that the remainder of his demand be rejected, and that defendant have the same judgment against the Sulphur Timber & Lumber Co., warrantor,

And by reason of the law and evidence being in favor of defendant, and warrantor in their reconventional demand for taxes:

It is ordered, adjudged and decreed that defendant have and recover of plaintiff the sum of Fourteen and 52/100 (\$14.52) Dollars with legal interest thereon from date until paid, and that the warrantor, the Sulphur Timber & Lumber Co., have judgment against plaintiff for taxes paid \$18.15, with legal interest from date until paid.

It is further ordered that said amounts of taxes be considered in partial compensation of the said judgment for Seventy (\$70.00) Dollars in favor of plaintiff.

It is further ordered that execution of this judgment be stayed

until the final decision in this suit of Grant Timber & Manufacturing Company vs. George W. Gray No. 2611 on the docket of this Court.

It is further ordered that defendant pay to plaintiff the cost of this suit, and that warrantor, the Sulphur Timber & Lumber Company pay cost of this suit to defendant. the Grant Timber & Manufacturing Company.

Thus done, read and signed in open Court on this the 29th day of November, A. D., 1911.

GEO. WEAR, *Judge*.

39 Endorsed: #2485 5th Judc'l D. C. Winn P'h La. Geo. W. Gray vs. Grant T. & M. Co. Judgment. Filed for record Nov. 29, 1911. S. M. Abel, D'y C. D. C. Recorded Dec. 4, 1911, at page 659 in Book "A" Judicial Mortgage, Records of Winn P'h, La.

40 State of Louisiana, Fifth Judicial District Court, Parish of Winn.

No. 2485.

GEORGE W. GRAY

vs.

GRANT TIMBER & MFG. CO.

Know all men by these presents: That we, George W. Gray as principal, and ——— as security, are held firmly bound unto P. K. Abel, Clerk of the Fifth Judicial District Court, Parish of Winn, and his successors in office, and assigns, in the full sum of One Hundred Dollars, lawful money of the United States of America, for the payment whereof well and truly to be made, we bind ourselves, our heirs and legal representatives firmly by these presents. Subscribed and dated at Winnfield, Louisiana, this — day of —, 190—.

Whereas the above bounden George W. Gray has obtained from said Court an order for a devolutive appeal from a judgment rendered in said Court against him in the suit of George W. Gray vs. Grant Timber & Manufacturing Co., which said appeal is returnable to the Supreme Court according to law.

Now, therefore, the condition, of the above obligation is such that if the said George W. Gray shall prosecute his said appeal with effect, or shall pay or perform such judgment that may be rendered against him or if the execution that may issue on such judgment should be satisfied out of his proper goods, chattels, lands, tenements, rights, or credits, then and in such case this obligation shall be null and void, otherwise to remain in full force and virtue.

G. W. GRAY.

T. J. LONG.

B. F. BARTON.

Signed in presence of:

— — —
— — —

Endorsed: Geo. W. Gray vs. Grant T'b'r & Mfg. Co. Bond filed Dec. 8th, 1911. S. M. Abel, D'y C. D. C.

No. 2485.

GEO. W. GRAY

VS.

GRANT TIMBER M'FG CO.

Extract of Court Minutes.

- March 29, 1910. Exception to Citation of Warrantor filed. Motion to strike out and revoke an answer and call in Warranty filed.
- March 31, 1910. Exception to Citation of warrantor taken up tried and overruled. Motion to strike out and revoke an order and call in warranty taken up tried and overruled.
- May 2, 1910. Continued until June term.
- May 3, 1910. Exception no cause of action filed.
- Oct. 3, 1910. By Consent continued.
- Feb. 20, 1911. Case continued.
- March 27, 1911. Case continued.
- May 16, 1911. Motion to stay proceedings filed out of term time.
- June 6, 1911. Motion to stay proceedings argued and taken under advisement.
- Oct. 21, 1911. Motion to stay proceedings overruled. Case set for Nov. 27, 1911.
- Nov. 27, 1911. Case taken up and continued until tomorrow 28 inst.
- Nov. 28, 1911. Answer on part of warrantor Sulphur Timber & Lumber Company filed. All exceptions referred to the merits by the Court. Case taken up and proceeded with until hour of adjournment. Plea of estoppel filed.
- Nov. 29, 1911. Case taken up argument had and judgment for plaintiff recognizing his claim to the extent of the enclosure and improvements and for the timber thereon, amounting to \$70.00, and that plaintiff be decreed to pay the Grant Timber & Mfg. Co., the sum of \$14.52 and to the Sulphur Timber & Lumber Company \$18.50 amount of taxes paid. That execution be stayed until suit Grant Timber & Mfg. Co., No. 2611 Geo. W. Gray be disposed of and that same judgment against defendant be rendered against warrantor. Judgment signed see decree. From which judgment plaintiff's counsel asked for and obtained in open Court an order of Devolutive appeal made returnable to the Hon. Supreme Court of the State of La., on or before Monday January 2nd, 1911. Devolutive appeal bond fixed in the sum of One Hundred Dollars. Notice of appeal filed.

42 STATE OF LOUISIANA,
 Fifth Judicial District Court
 for the Parish of Winn:

I, hereby certify that the foregoing 41 pages do contain a true, correct and complete transcript of all the proceedings had, documents filed and evidence adduced upon the trial of the cause wherein George W. Gray is plaintiff, and Grant Timber & Mfg. Co. is defendant, instituted in this Court and now in the records thereof, under the number 2845.

In testimony whereof, I have hereunto set my hand and affixed the impress of the seal of said Court, at the Town of Winnfield, on this the 30th day of December, in the year of our Lord One Thousand Nine Hundred and Eleven.

[SEAL.]

S. M. ABEL,
D'y Clerk.

43 Proceedings Had in the Supreme Court of the State of Louisiana.

No. 19231.

GEORGE W. GRAY
 vs.
 GRANT TIMBER & M'FG CO.

Transcript Filed.

Filed January 2, 1912.
 (Signed)

PAUL E. MORTIMER, *Clerk.*

Answer to Appeal.

In the Honorable the Supreme Court of Louisiana.

Number 19231.

GEORGE W. GRAY
 vs.
 GRANT TIMBER & MANUFACTURING COMPANY.

In this cause comes the Grant Timber & Manufacturing Company, defendant and appellee, and for answer to the appeal, represents that there was error in the judgment of the lower court to the prejudice of the defendant and appellee, in that the motion to stay proceedings in this case was not granted until the final decision in case 19232, Grant Timber & Manufacturing Company vs. George W. Gray.

44 Appearer shows in the alternative that if the court finds that there was no error in refusing to grant the stay of proceedings above mentioned, that then, and in that case, the judgment of the lower court was correct.

Wherefore, defendant and appellee prays that the judgment of the lower court be amended to the effect that proceedings in this case be stayed until the final decision in suit No. 19232, Grant Timber & Manufacturing Company vs. George W. Gray, and prays for all orders necessary, and for general relief.

(Signed)

HENRY MOORE,

H. H. WHITE,

Attorneys for Defendant and Appellee.

(Endorsed:) No. 19,231—George W. Gray vs. Grant Timber & Mfg. Co.—Answer to Appeal filed. Filed Nov. 13, 1912,—(Signed) John A. Klotz, Dy. Clerk.

Joint Motion to Consolidate and Submit on Briefs.

In the Honorable the Supreme Court of Louisiana.

Number 19231.

GEORGE W. GRAY, Plaintiff and Appellant,

VS.

GRANT TIMBER & MANUFACTURING COMPANY, Defendant and Appellee.

No. 19232.

GRANT TIMBER & MANUFACTURING COMPANY, Plaintiff and Appellee,

VS.

GEORGE W. GRAY, Defendant and Appellant.

To the Honorable the Supreme Court of Louisiana:

In the above numbered and entitled causes comes George
45 W. Gray and the Grant Timber & Manufacturing Company,
through undersigned counsel, and move the court that these
causes be consolidated for the purpose of trial, and that the consoli-
dated cases be submitted on briefs without oral argument.

(Signed)

MATHEWS & GAMBLE,

(Signed)

By JOHN H. MATHEWS,

Attorney- for George W. Gray.

(Signed)

H. H. WHITE,

(Signed)

HENRY MOORE,

Attorney- for Grant Timber & Manufacturing Company.

(Endorsed:) #19231-#19232. In the Hon. Supreme Court of La. G. W. Gray vs. Grant T. & M. Co. & Grant T. & M. Co. vs. G. W. Gray. Joint Motion to Consolidate & Submit on briefs. Filed Nov. 15, 1912, (Signed) John A. Klotz, Dep. Clerk.

Cause Called and Submitted.

(Extract from Minutes.)

NEW ORLEANS, WEDNESDAY, November 20, 1912.

The Court was duly opened, pursuant to adjournment. Present—
Their Honors: Joseph A. Breaux, Chief Justice. And Frank A.
Monroe, Olivier O. Provosty, Alfred D. Land and Walter B. Som-
merville, Associate Justices.

No. 19231.

GEORGE W. GRAY

vs.

GRANT TIMBER & M'F'G Co.

No. 19232.

GRANT TIMBER & M'F'G Co.

vs.

GEO. W. GRAY.

46 These two causes coming on this day to be heard, were, upon the
motion of counsel for the respective parties, consolidated for
the purpose of trial, and submitted to the Court for its con-
sideration upon the papers on file.

Final Judgment.

(Extract from Minutes.)

NEW ORLEANS, MONDAY, December 2, 1912.

The Court was duly opened, pursuant to adjournment. Present—
Their Honors: Joseph A. Breaux, Chief Justice. And Frank A.
Monroe, Olivier O. Provosty, Alfred D. Land and Walter B. Som-
merville, Associate Justices.

His Honor, Mr. Justice Land pronounced the opinion and judg-
ment of the Court in the following case:—

No. 19231.

GEORGE W. GRAY

vs.

GRANT TIMBER & M'F'G Co.

It is therefore ordered that the judgment below be amended by
striking therefrom the order for a stay of execution, and that as thus
amended said judgment be affirmed. It is further ordered that the
appellees pay costs of this appeal.

Opinion of the Court.

UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

NEW ORLEANS, MONDAY, December 2, 1912.

The Court was duly opened, pursuant to adjournment.

Present—Their Honors:

Joseph A. Breaux, Chief Justice.

Frank A. Monroe,

Olivier O. Provosty,

Alfred D. Land,

Walter B. Sommerville,

Associate Justices.

His Honor, Mr. Justice Land—

Pronounced the opinion and judgment of the Court in the following case:

Mr. Justice Land.

MONDAY, December 2nd, 1912.

No. 19231.

GEORGE W. GRAY

VS.

GRANT TIMBER & MFG. CO.

Appeal from the Fifth Judicial District Court, Parish of Winn,
Hon. George Wear, Judge.

This is a possessory action, coupled with a demand for damages for timber cut and removed by the defendant from the premises. Plaintiff alleged real and actual possession, as owner, for many years, of the S. E. $\frac{1}{4}$ of Sec. 25 T. 10, N. R. 3, and the illegal disturbance of his possession thereof by the defendant in February 1910 by the wrongful cutting and removing therefrom of timber worth \$2,250.00. Plaintiff sues for said sum, and \$250.00 for attorney fees.

Defendant filed an exception of no cause of action, and for answer pleaded the general issue, and specially denied the alleged actual possession of the land by the plaintiff. Further answering the defendant averred actual and legal possession in itself under a chain of title derived from the United States, which was set forth in the answer. Defendant further answering pleaded the prescription of ten years, *acquisendi causa*, under titles translativae of property; and averred the payment of taxes for four years amounting to at least

\$250.00, for which it prayed for judgment in the event of eviction. Defendant called its vendor in warranty, and prayed that plaintiff's demands be rejected, and in the event of a judgment in favor of the plaintiff, prayed for judgment over and against its warrantor.

49 Plaintiff moved to strike from the answer all averments relating to titles of the defendant; the acquisition of the property by the prescription of ten years; the payment of taxes on the land; and the right of the defendant to call its vendor in warranty. The Sulphur Timber Company, the warrantor, appeared, and excepted that plaintiff's petition and defendant's call in warranty disclosed no cause of action.

Defendant then pleaded that it had filed a separate suit against the plaintiff to test the ownership and title to the land and timber involved in the litigation, and moved for a stay of further proceedings in the cause until final adjudication on the question of title. This motion was overruled by the court. The warrantor filed an answer, admitting the sale to the defendant, setting up similar defenses, and claiming \$300.00 for taxes paid on the land. All the exceptions were referred to the merits.

The case was tried and there was judgment in favor of the plaintiff quieting him in his possession of the forty acres of land, more or less, under fence, actually occupied by him, and for \$70.00 for timber cut and removed therefrom, less taxes paid by the defendant and warrantor, aggregating \$32.67; and there was judgment against the plaintiff rejecting the remainder of his demands, and ordering that the execution of the judgment be stayed until the final decision of the suit instituted by the defendant against the plaintiff to test the title to the land and timber in controversy.

The plaintiff has appealed; and the defendant has answered praying "that the judgment of the lower court be amended to the effect that proceedings in this case be stayed until the final decision in suit No. 19,252, Grant Timber & Manufacturing Company vs.

50 George W. Gray." That case is before us on appeal by the defendant, Gray, from a judgment in favor of the plaintiff, the Grant Timber & Manufacturing Company. That judgment has been reversed and the suit has been dismissed by a decree of this Court. See Grant Timber & Manufacturing Co. vs. George Gray, No. 19,252.

George W. Gray, with his family, moved on the quarter section in dispute on January 1, 1899, and has been there ever since. His actual enclosures embrace an irregular area of land in the quarter section. Gray had no written title to the tracts, and the person, from whom he claims he bought had none, as far as the record shows. Parol proof of the alleged purchase was objected to by counsel for defendant, and the objection should have been sustained. Gray admits that he endeavored, about 1906, to purchase the tract from the vendor of the defendant. Gray was in actual possession of about forty acres of land within his fences. He had no title whatever to the quarter section, or any part thereof, and, therefore, his possession was by inches. It was admitted, subject to objections, that the defendant derived its title, through mesne conveyances from

the United States. The title was admissible for the purpose of showing civil possession and good faith.

It was admitted that the value of the timber cut within the enclosures of the plaintiff amounts to \$70.00. The payment of taxes by defendant and warrantor, as allowed in the judgment, is admitted.

On the facts of the case, the judgment below is correct, except as to the stay of execution.

It is therefore ordered that the judgment below be amended by striking therefrom the order for a stay of execution, and that as thus amended said judgment be affirmed.

51 It is further ordered that the appellees pay costs of this appeal.

Syllabus.

The possessor, without title, possesses only within the limits of his enclosures, and cannot recover damages for alleged trespass on timber beyond his enclosures.

52 *Application for Rehearing.*

In the Honorable Supreme Court of Louisiana.

No. 19231.

GEORGE W. GRAY, Plaintiff, Appellant,
versus

GRANT TIMBER & MANUFACTURING CO., Defendant, Appellee.

Application for Rehearing.

Filed Dec. 9th, 1912. (Signed) Paul E. Mortimer, Clerk.

May It Please the Court:

In this case defendant, appellee moves for a rehearing, and assigns as error of law, the following points:

1. That proceedings in this cause should have been stayed until after final decision on the merits in suit No. 19,231—Grant Timber and Manufacturing Company vs. George W. Gray.

2. That the action is not really a possessory action, but is an action to be decreed the owner of certain timber, in which the question of ownership, rather than of possession, should be first decided.

3. That Articles No. 55 et seq., Code of Practice, as construed in this case, permits a taking of property without due process of law, and is therefore violative of Article 2 of the Constitution of Louisiana, and Amendment XIV, Section 1 of the Constitution of the United States.

We request the Court to consider the application for rehearing in Suit No. 19,232, as a part of this application.

If on consideration of this application, the Court concludes that its findings of law, as expressed in the original opinion, are correct, we

submit that the findings of fact are correct, and should not be disturbed.

Wherefore, appellant prays that a rehearing be granted on the points of law above enumerated, and that on rehearing the privilege of submitting brief and making oral argument be allowed.

(Sg.)

HENRY MOORE,

(Sg.)

H. H. WHITE.

Attorneys for Grant Timber & Mfg. Co.

53

Rehearing Refused.

(Extract from Minutes.)

NEW ORLEANS, MONDAY, January 30th, 1913.

The Court was duly opened, pursuant to adjournment.

Present—Their Honors:

Joseph A. Breaux, Chief Justice, and

Frank A. Monroe,

Olivier O. Provosty,

Alfred D. Land, and

Walter B. Sommerville,

Associate Justices.

"By the COURT:

No. 19231.

GEORGE W. GRAY

vs.

GRANT TIMBER & MFG. CO.

It is ordered that the rehearing applied for in this case be refused.

54

UNITED STATES OF AMERICA,

State of Louisiana:

Supreme Court of the State of Louisiana.

I, Paul E. Mortimer, Clerk of the Supreme Court of the State of Louisiana, do hereby certify that the foregoing fifty three (53) pages contain a full, true and complete copy of the proceedings had in the Fifth Judicial District Court for the Parish of Winn, in a certain suit wherein George W. Gray, was plaintiff and Grant Timber & Mfg. Co. was defendant; and, also, of all the proceedings had in this Supreme Court on the appeal taken by said George W. Gray, plaintiff, which appeal is now on the files thereof, under the No. 19,231.

In testimony whereof I have hereunto set my hand, and affixed

the seal of said Court, at the city of New Orleans, this the 22nd day of March, Anno Domini, one thousand, nine hundred and thirteen, and of the Independence of the United States of America, the one-hundred and thirty-seventh.

[Seal Supreme Court of the State of Louisiana.]

PAUL E. MORTIMER,
Clerk Supreme Court of Louisiana.

55 UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

I, Joseph A. Breaux, Chief Justice of the Supreme Court of the State of Louisiana, do hereby certify that Paul E. Mortimer is Clerk of the Supreme Court of the State of Louisiana; that the signature of Paul E. Mortimer to the foregoing certificate is in the proper handwriting of him, the said clerk; that said certificate is in due form of law, and that full faith and credit are due to all of his official acts such.

In testimony whereof, I have hereunto set my hand and seal, at the city of New Orleans, this the 22nd day of March, A. D. one thousand, nine hundred and thirteen.

[Seal Supreme Court of the State of Louisiana.]

JOS. A. BREAU, X,
Chief Justice Supreme Court of the State of Louisiana.

56 UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

I, Paul E. Mortimer, Clerk of the Supreme Court of the State of Louisiana hereby certify that the Supreme Court of the State of Louisiana is the highest Court of law in Louisiana, and that the Honorable Joseph A. Breaux is the Chief Justice of said Court and that his signature to the above certificate is genuine.

In witness whereof I hereunto set my hand and the seal of the Court aforesaid, at the city of New Orleans, this the 22nd day of March, A. D. one thousand, nine hundred and thirteen.

[Seal Supreme Court of the State of Louisiana.]

PAUL E. MORTIMER,
Clerk Supreme Court of Louisiana.

57 *Petition for Writ of Error.*

In the Supreme Court of the United States of America, — Term,
A. D. 1913.

At Law. No. 19231.

GEORGE W. GRAY, Defendant in Error,

vs.

GRANT TIMBER & MANUFACTURING COMPANY, Petitioner in Error.

To the Honorable, the Chief Justice of the Supreme Court of the United States, and the Associate Justices of the said court:

Now comes the Grant Timber and Manufacturing Company, defendant, and petitioner in error, through undersigned attorneys, and respectfully shows that on the 2nd day of December, A. D. 1912, the Supreme Court of the State of Louisiana rendered final judgment against, and that on the 20th day of January, A. D. 1913, rehearing was refused, your petitioner, defendant in the above entitled cause, wherein certain errors were committed to the prejudice of your petitioner in that:

Petitioner in error, the Grant Timber & Manufacturing Company claims as owner the S. E. $\frac{1}{4}$ of Sec. 25, Township 10, North, Range Three West.

In February, 1910, petitioner in error, not knowing that defendant in error claimed possession of the above described land, and the timber situated thereon, entered said land and began to cut said timber.

Defendant in error, claiming possession of said land and timber, immediately brought a possessory action, alleging said land to be worth the sum of Four thousand dollars (\$4,000.00) and that he, defendant in error, had been damaged in the full sum of
58 Twenty-five Hundred Dollars (\$2,500.00).

Petitioner in error then filed a separate suit against defendant in error to test the ownership and title to the land and timber, and in the present suit filed a motion to stay proceedings until there could be a final adjudication upon the question of title and property involved in this suit, which questions had been presented for adjudication in the suit of the Grant Timber and Manufacturing Company vs. George W. Gray, and petition in which suit was made a part of the motion of petitioner in error to stay proceedings, on the ground that any judgment in this suit rendered in favor of plaintiff (defendant in error) and against defendant (petitioner in error) for the value of the timber removed without first requiring plaintiff (defendant in error) to prove his ownership of same and of the land on which it stood would be a taking of defendant's (petitioner in error) property, without due process of law, and contrary to the Constitution and laws of the United States, and of the State of Louisiana.

That the lower court overruled the motion to stay proceedings and rendered judgment for seventy dollars, less \$14.52, for taxes paid, in favor of plaintiff and ordered that the execution of the judgment be stayed until the final decision of the suit instituted by the defendant (petitioner in error) against the plaintiff (defendant in error) to test the title to the timber and the land in controversy; and on appeal, the Supreme Court of Louisiana ordered that the judgment below be amended by striking therefrom the order for a stay of execution, and that as thus amended the said judgment be affirmed.

All of which is fully apparent in the judgment record and proceedings of the case and specifically set forth in the assignment of errors filed herewith.

59 That the said Supreme Court of the State of Louisiana is the highest Court of the said State of Louisiana, in which a decision in this matter could be had.

Wherefore, premises considered, petitioner in error prays that a writ of error from the Supreme Court of the United States may issue in this behalf to the Supreme Court of the State of Louisiana for the correction of errors herewith assigned, and that a transcript of the judgment record, proceedings, and papers in this cause, duly authenticated, may be sent to the Supreme Court of the United States.

Dated this — day of — A. D. —.

HENRY MOORE,

WHITE & THORNTON & HOLLOMAN,

Attorneys for Petitioner in Error.

59½ [Endorsed:] No. 19,231. Supreme Court Louisiana.
Geo. W. Gray vs. Grant Timber & Mfg. Co. Petition for writ of error. Filed Mar. 19th, 1913. Paul E. Mortimer, clerk.

60 *Assignment of Error.*

In the Supreme Court of the United States of America. — Term,
—, A. D. 1913.

At Law. No. 19231.

GEORGE W. GRAY, Defendant in Error,

vs.

GRANT TIMBER AND MANUFACTURING COMPANY, Petitioner in Error.

Now comes the Grant Timber and Manufacturing Company, defendant, petitioner in error, in the above numbered and entitled cause, through its undersigned attorneys, and says that the judgment entered in the above cause on the 2nd day of December, A. D. 1912, and in which a re-hearing was refused on the 20th day of January, A. D. 1913, is erroneous and unjust to petitioner in error, and in connection with its petition for a writ of error in this cause assigns the following errors upon which it relies to reverse the judgment entered herein as appears of record.

First. The Supreme Court of the State of Louisiana erred in holding Article 55 of the Code of Practice of the State of Louisiana to be constitutional.

Second. The Supreme Court of Louisiana erred in overruling defendant's motion to stay proceedings in this suit until there had been a final adjudication of the questions of title and property involved in this suit, which questions had been presented for adjudication in the suit of Grant Timber and Manufacturing Company vs. George W. Gray, No. 19232 in the Supreme Court of Louisiana, the pleadings and judgment of which are made a part of this record, said motion based on the ground that any judgment in favor of plaintiff (defendant in error) for value of timber cut and removed without the plaintiff first proving ownership, would be a taking of defendant's (petitioner in error) property, without due process of law, and in violation of Amendment 14, Section 1, of the Constitution of the United States.

Third. The Supreme Court of Louisiana erred in amending the judgment of the lower court by striking therefrom the order for a stay of execution.

Fourth. By virtue of said Article 55, and the decision of the Supreme Court of Louisiana, the Grant Timber and Manufacturing Company is made to pay for taking property which it claims to own without ever having had a day in Court to test the question of ownership.

Wherefore, petitioner in error prays that said judgment of said Court be reversed, annulled and altogether held for naught, and that it may be restored to all things which it has lost by the action and because of the said judgment and decision.

HENRY MOORE,

WHITE, THORNTON & HOLLOMAN,

Attorneys for Petitioner in Error.

61½ [Endorsed:] No. 19,231. Supreme Court Louisiana.
Geo. W. Gray vs. Grant Timber and Manufacturing Co. Assignment of Error. Filed March 19th, 1913. Paul E. Mortimer, clerk.

62 *Order of Allowance.*

In the Supreme Court of the United States of America, — Term,
—, A. D. 1913.

At Law. No. 19231.

GEORGE W. GRAY, Defendant in Error,

vs.

GRANT TIMBER AND MANUFACTURING COMPANY, Petitioner in Error.

On this, the 13th day of March, A. D. 1913, came on to be heard the application of the Grant Timber and Manufacturing Company,

defendant, petitioner in error, said petitioner in error being represented by counsel, for a writ of error, and it appearing from the petition filed herein, and the record filed therewith, that the application ought to be granted, and that a transcript of the record and proceedings and papers upon which the judgment of the court was rendered, properly certified, should be sent to the Supreme Court of the United States, as prayed for in the petition, that such proceedings may be had as will be just in the premises.

It is therefore ordered that the writ of error be allowed upon the petitioner in error giving bond, conditioned as the law directs, in the sum of five hundred (500) Dollars, to operate as a supersedeas bond, and that a true copy of the record, assignment of errors and all proceedings had in the case in the Supreme Court of the State of Louisiana shall be transmitted to the Supreme Court of the United States, properly certified as the law directs, that the said court may inspect the same and do what according to law should be done.

J. R. LAMAR,

Associate Justice Supreme Court of the United States.

62½ [Endorsed:] No. 19,231. Supreme Court of Louisiana.
George W. Gray vs. Grant Timber & Mfg. Co. Order allowing writ. Filed Mar. 19, 1913. Paul E. Mortimer, Clerk.

63

Copy of Bond for Writ of Error.

Know all men by these presents, That we, Grant Timber & Manufacturing Company, as principal, and United States Fidelity and Guaranty Company, a corporation of the State of Maryland, of Baltimore, Maryland, as surety, are held and firmly bound unto George W. Gray, in the full and just sum of Five Hundred Dollars, to be paid to the said George W. Gray, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents. Sealed with our seals and dated this Thirteenth day of March, in the year of our Lord one thousand nine hundred and thirteen.

Whereas, lately at a term of the Supreme Court of the State of Louisiana, in a suit depending in said Court, between George W. Gray, plaintiff, and Grant Timber & Manufacturing Company, defendant, No. 19,231, a judgment was rendered against the said Grant Timber & Manufacturing Company, and the said Grant Timber & Manufacturing Company having obtained a writ of error and filed a copy thereof in the Clerk's Office of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said George W. Gray, citing and admonishing him to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof.

Now, the condition of the above obligation is such, That if the said Grant Timber & Manufacturing Company shall prosecute said writ of error to effect, and answer all damages and costs if it fail

to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

64 (Signed) GRANT TIMBER & MANUFACTURING COMPANY,
(Sg.) Per J. R. THORNTON, [SEAL.]
Attorney of Record. [SEAL.]
UNITED STATES FIDELITY
AND GUARANTY COM.
PANY, [SEAL.]
(Sg.) By WM. L. SWONNSTEDT,
Attorney-in-Fact. [SEAL.]

Sealed and delivered in presence of—
(Signed) C. M. SALE.

Approved by—
(Signed) J. R. LAMAR,
*Associate Justice of the Supreme Court
of the United States.*

(Endorsed:) No. 19,231—Grant Timber & Manufacturing Co., Plaintiff in Error, vs. Geo. W. Gray, Defendant in Error,—Bond for writ of error. Filed March 19th, 1913. (Signed) Paul E. Mortimer, Clerk.

65 UNITED STATES OF AMERICA, ss:

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between George W. Gray, plaintiff, and Grant Timber & Manufacturing Company, defendant, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or

66 of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said defendant, Grant Timber & Manufacturing Company, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in

this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the 13th day of March, in the year of our Lord one thousand nine hundred and thirteen.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by
J. R. LAMAR,
*Associate Justice of the
Supreme Court of the United States.*

[Endorsed:] No. 19,231. Supreme Court Louisiana. Grant Timber & Manufacturing Co., Plaintiff in Error, vs. Geo. W. Gray, Defendant in Error. Writ of Error. Filed March 19th, 1913. Paul E. Mortimer, Clerk.

67 *Certificate of Lodgment.*

UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

I, Paul E. Mortimer, Clerk of the Supreme Court of the State of Louisiana, do hereby certify that there was lodged with me as such clerk, on March 19th, 1913, in the matter of Grant Timber & Mfg. Co., Plaintiff-in-error vs. George W. Gray, Defendant-in-error:

First. The petition for writ of error, assignment of errors and the allowance of the writ of error, as herein set forth.

Second. The original bond of which a copy is herein set forth.

Third. The original writ of error as set forth in this transcript; one copy of the writ of error to be served on the defendant in error and one copy of the writ of error to be filed in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at the city of New Orleans, this the 22nd day of March, A. D. 1913.

[Seal Supreme Court of the State of Louisiana.]

PAUL E. MORTIMER,
Clerk Supreme Court of Louisiana.

68 UNITED STATES OF AMERICA, ss:

To George W. Gray, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the Supreme Court of the State of Louisiana, wherein Grant Timber & Manufacturing Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Joseph R. Lamar, Associate Justice of the Supreme Court of the United States, this 13th day of March, in the year of our Lord one thousand nine hundred and thirteen.

J. R. LAMAR,
*Associate Justice of the Supreme Court
of the United States.*

On this 20th day of March, in the year of our Lord one thousand nine hundred and thirteen, personally appeared J. J. Baillio before me, the subscriber, and makes oath that he delivered a true copy of the within citation to John H. Mathews, at Winnfield, La., Attorney for Defendant in Error.

J. J. BAILLIO,
Deputy Marshall, Western District of Louisiana.

Sworn to and subscribed the 20th day of March, A. D. 1913.

[SEAL.]

P. K. ABEL,
Clerk & ex-Officio Notary Public.

Filed Mar. 22, 1913.

PAUL E. MORTIMER,
Clerk Sup. Ct. of Louisiana.

69

Return to Writ.

UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

In obedience to the commands of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the complete record and proceedings in the within entitled case, together with all things concerning the same.

In witness whereof, I hereunto subscribe my name, and affix the seal of said Supreme Court of Louisiana, in the city of New Orleans, this the 22nd day of March, A. D. 1913.

[Seal Supreme Court of the State of Louisiana.]

PAUL E. MORTIMER,
Clerk Supreme Court of Louisiana.

- 70 *Certified Copy of Some of the Proceedings Had in the Fifth Judicial District Court for the Parish of Winn in the Cause Entitled Grant Timber & Manufacturing Company vs. George W. Gray, Together with Certified Copy of the Proceedings Had in the Supreme Court of the State of Louisiana in the Above Entitled Cause, No. 19232, When Appealed to the Supreme Court of the State of Louisiana, Referred to by the Grant Timber and Manufacturing Company, Plaintiff-in-Error, in Its Assignment of Errors.*

- 71 5th Judicial District Court, Parish of Winn, State of Louisiana.

No. 2611.

GRANT TIMBER & MANUFACTURING CO.

vs.

GEORGE W. GRAY.

To the Honorable the Judge of the Fifth Judicial District Court in and for the Parish of Winn, State of Louisiana:

The petition of the Grant Timber & Manufacturing Company, a corporation organized under the laws of the State of Arkansas, domiciled at Texarkana, in that State, and having as its selected place of service Minden, Webster Parish, Louisiana, where it is represented for purposes of citation by E. E. Fitzgerald; and herein acting and represented by its President, William Buchanan, with respect that it owns by good and valid title the Southeast (S. E. $\frac{1}{4}$) Quarter of Section Twenty-five (25) Township Ten (10) North, Range Three (3) West, in Winn Parish, Louisiana, and that said property is worth the sum of Four Thousand (\$4,000.00) Dollars.

Petitioner further represents that it owns said property by virtue of the following chain of titles duly of record in the Conveyance Books of Winn Parish, Louisiana, viz:

United States to New Orleans Pacific Ry. Co., selected Dec. 28, 1883, under Act March 3rd, 1871, New Orleans Abstract of Entries page 74, et seq.

New Orleans Pacific Railway Company, to John Bennett, June 13, 1892, Recorded in Book "C" page 775, Records of Winn Parish.

Heirs of John Bennett to Thatcher & Barnum, April 24, 1893, recorded in Book "D" page 178, Records of Winn Parish.

Thatcher & Barnum to Ruston State Bank, May 13, 1902, Book "L" page 414, Conveyance Records of Winn Parish, La.

Ruston State Bank to N. D. Huie, June 12, 1902, recorded Book "L" page 415, Conveyance Records of Winn Parish.

N. D. Huie to Sulphur Timber & Lumber Co., July 21, 1903, recorded Book "L" page 740 Conveyance Records of Winn Parish, Louisiana.

- 72 Sulphur Timber & Lumber Company, to plaintiff, by warranty deed duly of record in Conveyance Books of Winn Parish.

Petitioner avers that under said title it has owned said property through itself and *authors* ever since Dec. 28, 1883, and has had such possession as flows from legal title translativ of property duly recorded, accompanied by ranging land, cutting timber and paying taxes thereon.

Plaintiff avers that George W. Gray, a resident of Winn Parish, Louisiana, claims to own and possess said property by virtue of being the as-ignee of an actual settler on same, prior to the location of the New Orleans Pacific land grant, though plaintiff denies that said Gray either owns or possesses same.

Plaintiff further avers that said Gray in suit No. 2485, on the docket of this Honorable Court, entitled George W. Gray vs. Grant Timber & Manufacturing Company, has sued plaintiff in an action of trespass for timber cut and removed by defendant from said land, and will doubtless try to prevent an adjudication upon the question of title to same in that suit on the ground that said suit No. 2485 is possessory in its nature.

Plaintiff shows that the question of title is paramount and should be first decided, and that the question — ownership of the timber and recovery for its value should be first decided and that proceedings in said suit No. 2485 should be stayed until said questions have been decided in this suit, and that the plaintiff in this suit, who is defendant in said suit No. 2485, is filing a motion praying for stay of proceedings in that suit, until this suit has been fully decided.

Plaintiff shows that there are Federal questions involved in this suit concerning the interpretation of the New Orleans Pacific Railway grant; and that any judgment which might be rendered in this suit in favor of defendant for the value of timber cut and removed, without first requiring defendant to prove his ownership of same, and of the land on which it stood, would be a taking of Plaintiff's property without due process of law and contrary to

73 the Constitution and laws of the United States and of the State of Louisiana, and that if the articles of the Code of Practice of Louisiana Nos. 46-60, inclusive, or any other law or laws of Louisiana mean that recovery may be had by plaintiff for the value of timber without first proving ownership, that such articles and laws are unconstitutional and violative of the Constitution of the United States, and particularly of Amendment 14, Sec. 1, of said Constitution; and also of Article 2 of the Constitution of the State of Louisiana.

Wherefore, plaintiff prays that defendant, George W. Gray, be served with a copy of this petition and cited to answer, and that after legal delays and due proceedings had there be judgment decreeing the petitioner to be the owner of the property described in the body of this petition, and to have been the owner of the timber cut and removed by it therefrom, and be placed in possession and quieted in its ownership and title and possession to said land and timber; and that all proceedings in suit No. 2485 be stayed until this case is finally decided; and for all orders necessary and proper and for general relief and costs.

HENRY MOORE,

H. H. WHITE,

Attorneys for Plaintiff.

Endorsed: Grant Timber & Manufacturing Company vs. Geo. W. Gray. #2611. Filed May 16, 1911, S. M. Abel, D'y C. D. C.

74 In the Fifth District Court, Winn Parish, Louisiana.

No. 2611.

GRANT TIMBER & MFG. CO.

vs.

GEORGE W. GRAY.

Now comes George W. Gray, made defendant in the above entitled and numbered cause, and without any way answering, but appearing solely for the purpose of making exception and motion, moves and prays the Court to dismiss plaintiff's suit for the following reason:

Defendant shows that he brought possessory action against Grant Timber & Manufacturing Company, who is plaintiff in this cause. This said possessory action being instituted in your Honorable Court and bearing number 2485, entitled George W. Gray vs. Grant Timber & Manufacturing Company on the docket of this Court; that the same identical land is involved in said suit of possessory action as is involved in the above entitled and numbered cause, which present cause is a petitory action, in which the plaintiff here is defendant in the said possessory action, and the defendant herein is plaintiff in the said possessory action.

Defendant shows that said possessory action is still pending in your Honorable Court, has never been tried, but is at issue and ready to be regularly set for trial, and your defendant expects to ask your Honorable Court to set his said possessory action suit for trial at this term of Court; That no judgment has ever been rendered in said possessory action:

Defendant shows, that under the law, he who is sued in a possessory action, as the plaintiff, Grant Timber & Manufacturing Company, stands sued in this Court, can not bring a petitory action until after judgment shall have been rendered in the possessory action and until, if he be condemned, he shall have satisfied the judgment given against him.

Hence, Grant Timber & Manufacturing Company, plaintiff herein, can not bring this, its petitory action, until after the suit of possessory action against it, filed by George W. Gray, and pending in your Honorable Court be finally adjudged, and until, if it be condemned in said suit, it shall have satisfied the judgment given against it.

Wherefore, defendant moves and prays that this present suit be dismissed at plaintiff's cost.

Prays for general relief.

MATHEWS & GAMBLE,

Attorneys for Defendant.

Endorsed: No. 2611. In 5th District Court, Winn Parish, La., Grant Timber & Manufacturing Company vs. George W. Gray. Motion to dismiss. Filed June 5, 1911. P. K. Abel, C. D. C.

76

In Fifth Judicial District Court.

PARISH OF WINN,
State of Louisiana:

No. 2611.

GRANT TIMBER & MFG. CO.

vs.

GEORGE W. GRAY.

Note of Evidence Taken on Trial in the Above-styled and Numbered Cause in the Fifth Judicial District Court, Parish of Winn, State of Louisiana.

Hon. George Wear, Judge.

White, Thornton & Holloman, attorneys for Plaintiff.
Mathews & Gamble, attorneys for Defendant.

Defendant objects to going into the trial of this cause for the reason that the defendant, George W. Gray, in the above entitled cause is plaintiff in a possessory action filed and still pending in this Court, entitled: George W. Gray vs. Grant Timber & Mfg. Co., No. 2485, in Fifth District Court, Winn Parish, Louisiana, which was filed February 19th, 1910, taken up and tried and judgment just at this hour orally rendered in which defendants were cast as follows:

Case taken up, argument had, judgment for plaintiff recognizing his claim to the extent of the enclosure and improvements, and for timber cut thereon amounting to \$70.00, and that plaintiff be decreed to pay to the Grant Timber & Mfg. Co. the sum of \$14.52, and to Sulphur Timber & Lumber Co. \$18.50, amount of taxes paid; that execution be staid until suit, Grant Timber & Mfg. Co. vs. George Gray, No. 2611, be disposed of, and that same judgment rendered against defendant be rendered against warrantor.

The said judgment has not been written up and signed for want of time for its preparation, and according to the rules of Court, that said George W. Gray decided to appeal and will appeal from said judgment, when written up and signed, to the Honorable Supreme Court of Louisiana.

Therefore, defendant, George W. Gray, objects and protests against the taking up for trial, or any other proceedings being had in the above entitled suit, which is a petitory action, for the reason

that the law provides: "He who is sued in a possessory action
77 cannot bring a petitory action until after judgment shall have been rendered in the possessory action, and until, if he has been condemned, he shall have satisfied the judgment given against him." In the support of which objection, defendant will offer the entire record in suit No. 2485, entitled George W. Gray vs. Grant Timber & Manufacturing Company, in Fifth District

Court, Winn Parish, Louisiana, including all the pleadings therein filed. Also offers in record the entire Court Minutes in suit No. 2485, being the same suit, with leave to substitute certified copies of said suit and minutes.

And for these reasons, supported by the proof introduced, defendant, George W. Gray, declines to file any answer or introduce any other proof at this time, and at this stage of the proceedings.

Plaintiff offers patent, United States to New Orleans Pacific Railway Company under selection December 28th, 1883, under Act of March 3rd, 1871, New Orleans Abstract of Entries, page 74, et seq. with leave to substitute copy.

Offers deed, New Orleans Pacific Railway Company to John Bennett, dated June 13th, 1892, recorded in Book "C," page 775, Records of Winn Parish, marked Plaintiff "2."

Offers deed from Heirs of John Bennett to Thatcher & Barnum, April 24th, 1893, recorded in Book "D," page 178, Records of Winn Parish, marked Pl'tff "3."

Deed from Thatcher & Barnum to Ruston State Bank, dated May 13, 1902, recorded in Book "L," page 414, Records of Winn Parish, marked Pl'tff "4."

Deed from Ruston State Bank to N. D. Huie, dated June 12th, 1902, recorded in Book "L," page 415, Conveyance Records of Winn Parish, marked Pl'tff "5."

Deed from N. D. Huie to Sulphur Timber & Lumber Co., dated July 21st, 1903, recorded in Book "L," page 740, Conveyance Records of Winn Parish, marked Pl'tff "6."

78 Deed from Sulphur Timber & Lumber Co. to Grant Timber & Mfg. Co., dated July 12th, 1907, recorded August 8th, 1907, in Book "Q," page 765, Records of Winn Parish, with leave to substitute certified copy, marked Pl'tff "7."

Plaintiff offers all of the testimony taken in behalf of the defendant in suit No. 2485, George W. Gray, vs. Grant Timber & Mfg. Co., on the docket of this Court, with leave to supply same, including the offerings made in that suit, and including the contract between George W. Gray and the firm of Mathews & Gamble and J. Russel Simmons.

Testimony closed.

79 In Fifth Judicial District Court, Winn Parish, Louisiana.

No. 2611.

GRANT TIMBER & MANUFACTURING COMPANY

VS.

GEORGE W. GRAY.

This cause coming on for trial pursuant to assignment and after default regularly entered, and three (3) judicial days having elapsed after default by reason of the law and evidence being in favor of the plaintiff and against the defendant;

It is ordered, adjudged and decreed that plaintiff be confirmed in the ownership and title of the land involved in this suit, to-wit:

The S. E. $\frac{1}{4}$ of Section 25, Tp. 10 N., R. 3 West, in Winn Parish, Louisiana, and that plaintiff be placed in possession of same as owner and that defendant pay all cost of this suit.

Thus done, read and signed in open Court on this the 29th day of November, A. D., 1911.

GEO. WEAR, *Judge.*

Endorsed: No. 2611 Judicial D. C., Winn Parish, La., Grant Timber & Mfg. Co., vs. Geo. W. Gray, Judgment. Filed Nov. 29, 1911, S. M. Abel, Dy. C. D. C. Recorded December 8th, 1911, on page 518 in Book "T" Conveyance Records of Winn Parish, Louisiana

80 In 5th District Court, Winn Parish, Louisiana.

No. 2611.

GRANT TIMBER & MANUFACTURING COMPANY

vs.

GEORGE W. GRAY.

Now comes George W. Gray, defendant in this cause, and shows the Court that he is aggrieved by the proceedings had heretofore in this cause and the judgment herein rendered on the 29th day of November, 1911, and signed on the 29th day of November, 1911, in favor of plaintiff; that the whole proceedings in this cause and judgment herein rendered are contrary to the law and evidence; and that mover desires to appeal devolutively therefrom to the Supreme Court of the State of Louisiana.

Wherefore, mover prays for an order of appeal returnable to the Supreme Court of the State of Louisiana.

Prays for general relief.

MATHEWS & GAMBLE,

Attorneys for Mover.

Order.

The foregoing motion for an appeal having been filed by counsel for defendant in the presence of counsel for plaintiff, and having been considered:

It is ordered that a devolutive appeal be granted to the said George W. Gray, defendant, returnable to the Supreme Court of the State of Louisiana on the 2nd day of Jan. 1912, upon Mover furnishing bond with good and solvent surety in the sum of Fifty Dollars.

This done, ordered and signed in open Court, and in the presence of both counsel for plaintiff and counsel for defendant, on this the 29th day of November, A. D., 1911.

GEO. WEAR,

Judge of 5th District Court.

Endorsed: No. 2611. In Fifth District Court, Winn Parish, Louisiana. Grant Timber & Manufacturing Company vs. George W. Gray. Motion for Appeal. Filed Nov. 29, 1911. S. M. Abel, Dy. C. D. C.

81 STATE OF LOUISIANA:

Fifth Judicial District Court, Parish of Winn.

No. 2611.

GRANT TIMBER & MANUFACTURING COMPANY

VS.

GEORGE W. GRAY.

Know all men by these presents: That we George W. Gray, as principal, and ———, as security, are held firmly bound unto P. K. Abel, Clerk of the Judicial District Court, Parish of Winn, and his successors in office, and assigns, in the full sum of Fifty Dollars, lawful money of the United States of America, for the payment whereof well and truly to be made, we bind ourselves, our heirs and legal representatives firmly by these presents.

Subscribed and dated at Winnfield, Louisiana, this — day of —, 190—.

Whereas, the above bounded George W. Gray, has obtained from said Court an order for a devolutive appeal from a judgment rendered in said Court against him in the suit of Grant Timber & Manufacturing Company vs. George W. Gray which said appeal is returnable to the Supreme Court, according to law.

Now, therefore, the condition, of the above obligation is such that if the said George W. Gray, shall prosecute his said appeal with effect, or shall pay or perform such judgment that may be rendered against him or if the execution that may issue on such judgment should be satisfied out of his proper goods, chattels, lands, tenements, rights or credits, then and in such case this obligation shall be null and void, otherwise to remain in full force and virtue.

G. W. GRAY.

J. H. BARTON.

JOE KYSON.

Signed in presence of:

Endorsed: Grant Timber & Manufacturing Company vs. Geo. W. Gray. Appeal Bond, Filed Dec. 8th, 1911. S. M. Abel, Dy. C. D. C.

82 5th District Court, Winn Parish, Louisiana.

No. 2611.

GRANT TIMBER & MFG. CO.

vs.

GEO. W. GRAY.

Extract of Court Minutes.

- June 5, 1911. Motion to dismiss filed, taken up, tried, argued and taken under advisement.
- Oct. 21, 1911. Motion to dismiss sustained to the extent of staying proceedings in this suit until the termination of suit No. 2485, entitled G. W. Gray vs. Grant Timber & Mfg. Co.
- Nov. 22, 1911. Motion filed by counsel for plaintiff to fix case for trial on Nov. 27, 1911. Motion allowed.
- Nov. 23, 1911. Default entered.
- Nov. 27, 1911. Case taken up and continued until tomorrow 28, inst.
- Nov. 28, 1911. Answer filed, case taken up and continued until tomorrow.
- Nov. 29, 1911. Case taken up evidence heard and judgment for plaintiff as prayed for, judgment signed see decree. From which judgment defendant's Counsel asked for and obtained in open Court an order for Devolutive appeal returnable to the Hon. Supreme Court of the State of Louisiana, on or before Monday, Jan. 2, 1912. Devolutive appeal bond fixed in the sum of \$50.00. Motion for appeal filed.

83 STATE OF LOUISIANA:

Fifth Judicial District Court for the Parish of Winn.

I, hereby certify that the foregoing 57 pages do contain a true, correct and complete transcript of all the proceedings had, documents filed and evidence adduced upon the trial of the cause wherein Grant Timber & Mfg. Co. is plaintiff, and George W. Gray is defendant, instituted in this Court and now in the records thereof, under the number 2611.

In testimony whereof, I have hereunto set my hand and affixed the impress of the seal of said Court, at the Town of Winnfield, on this the 30th day of December, in the year of our Lord One Thousand Nine Hundred and Eleven.

S. M. ABEL,
D'y Clerk.

84 *Proceedings Had in the Supreme Court of the State of Louisiana.*

Transcript Filed.

No. 19232.

GRANT TIMBER & MFG. CO.

vs.

GEO. W. GRAY.

Filed January 2, 1912. (Signed) Paul E. Mortimer, Clerk.

Joint Motion to Consolidate and Submit on Briefs.

In the Honorable the Supreme Court of Louisiana.

Number 19231.

GEORGE W. GRAY, Plaintiff and Appellant,

vs.

GRANT TIMBER & MANUFACTURING COMPANY, Defendant and Appellee.

Number 19232.

GRANT TIMBER & MANUFACTURING COMPANY, Plaintiff and Appellee,

vs.

GEORGE W. GRAY, Defendant and Appellant.

To the Honorable the Supreme Court of Louisiana:

In the above numbered and entitled causes come George W. Gray and the Grant Timber & Manufacturing Company, through undersigned counsel, and move the court that these causes be consolidated for the purpose of trial, and that the consolidated cases be submitted on briefs without oral argument.

85

(Signed)

(Signed)

(Signed)

(Signed)

MATHEWS & GAMBLE,

By JOHN H. MATHEWS,

Attorney for George W. Gray.

H. H. WHITE,

HENRY MOORE,

Attorneys for Grant Timber & Manufacturing Company.

(Endorsed:) #19231, #19232. In the Hon. Supreme Court of La. G. W. Gray vs. Grant T. & M. Co. & Grant T. & M. Co. vs. G. W. Gray. Joint Motion to Consolidate and submit on briefs. Filed Nov. 15, 1912. (Signed) John A. Klotz, Dep. Clerk.

Cause Continued to November 20th, 1912.

(Extract from Minutes.)

NEW ORLEANS, November 19th, 1912.

The Court was duly opened, pursuant to adjournment.

Present—Their Honors: Joseph A. Breaux, Chief Justice. And Frank A. Monroe, Olivier O. Provosty, Alfred D. Land and Walter B. Sommerville, Associate Justices.

No. 19232.

GRANT TIMBER & MANUFACTURING Co.

vs.

GEO. W. GRAY.

This case was ordered by the Court to be continued until Wednesday, November 20th, 1912.

Cause Called and Submitted.

(Extract from Minutes.)

86

NEW ORLEANS, WEDNESDAY, November 20, 1912.

The Court was duly opened, pursuant to adjournment.

Present—Their Honors: Joseph A. Breaux, Chief Justice. And Frank A. Monroe, Olivier O. Provosty, Alfred D. Land and Walter B. Sommerville, Associate Justices.

No. 19231.

GEORGE W. GRAY

vs.

GRANT TIMBER & MFG. Co.

No. 19232.

GRANT TIMBER & MFG. Co.

vs.

GEO. W. GRAY.

These two causes coming on this day to be heard, were, upon the motion of counsel for the respective parties, consolidated for the purpose of trial, and submitted to the court for its consideration upon the papers on file.

Final Judgment.

(Extract from Minutes.)

NEW ORLEANS, MONDAY, December 2nd, 1912.

The Court was duly opened, pursuant to adjournment.

Present—Their Honors: Joseph A. Breaux, Chief Justice. And Frank A. Monroe, Olivier O. Provosty, Alfred D. Land, and Walter B. Sommerville, Associate Justices.

His Honor, Mr. Justice Sommerville, pronounced the opinion and judgment of the Court in the following case:

No. 19232.

GRANT TIMBER & MFG. CO.

VS.

GEO. W. GRAY.

87 The judgment appealed from is annulled, avoided and re-
versed; and it is now ordered, adjudged and decreed that
this suit is dismissed at plaintiff's costs; reserving to plain-
tiff the right to sue defendant to have the question of title de-
termined between them as to the ownership of the land in question
after judgment shall have been rendered in the possessory action;
and, if it has been condemned, it shall have satisfied the judgment
given against it.

*Opinion of the Court.*UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

NEW ORLEANS, MONDAY, December 2nd, 1912.

The Court was duly opened, pursuant to adjournment.

Present—Their Honors: Joseph A. Breaux, Chief Justice; Frank A. Monroe, Olivier O. Provosty, Alfred D. Land, Walter B. Sommerville, Associate Justices.

His Honor, Mr. Justice Sommerville pronounced the opinion and judgment of the Court in the following case:

Mr. Justice Sommerville.

MONDAY, December 2nd, 1912.

No. 19232.

GRANT TIMBER & M'FG CO.

vs.

GEO. W. GRAY.

Appeal from the Fifth Judicial District Court, Parish of Winn,
Hon. George Wear, Judge.

This is a petitory action brought in contravention of the fifty-fifth article of the code of practice, which provides: "he who is sued in a possessory action cannot bring a petitory action until after judgment shall have been rendered in the possessory action, and until, if he has been condemned, he shall have satisfied the judgment given against him."

Defendant appears and shows that he had brought a possessory action against the plaintiff for possession of the land described in plaintiff's petition; that said action is still pending in the same district court with this suit; and he asks for the dismissal of plaintiff's suit with costs.

The motion to dismiss was sustained to the extent of staying proceedings in this suit until the termination of the possessory suit entitled G. W. Gray vs. Grant Timber & Mfg. Co.; but a default was entered; and judgment rendered decreeing that plaintiff be confirmed in the ownership and title of the land involved on the same day that judgment was rendered in the suit for possession. Defendant has appealed.

The possessory action is defined to be (C. P. art. 4) a real action, relating to claims made on immovable property; (art. 6) an action by which one claims to be maintained in the possession of an immovable property, or of a right upon or growing out of it, when he has been disturbed; or, to be reinstated to that possession, when he has been divested or evicted." The evidence filed by defendant on the trial of the motion to dismiss shows that the prior suit
89 filed by him against the Grant Timber & Manufacturing Co. was a possessory action, and had for its object to be maintained in the possession of the immovable property in controversy, and to be reinstated in the possession of the growing trees, or their value, which the Grant Timber & Manufacturing Company had violently taken from his land while trespassing thereupon.

Plaintiff argues that the action of George W. Gray against it was not a possessory action, in that in addition to asking that he be quieted in the possession of the land, that he further prayed for judgment for the value of the timber alleged to have been illegally taken from the land by the Grant Timber & Mfg. Co. That before Gray could obtain judgment for the value of the timber that he

would have to prove title thereto; and that as the question of Gray's title could not be determined in a possessory action that the suit was not exclusively possessory.

In the case of *Smith, et al. vs. Grant Timber & Mfg. Co.*; plaintiff here, we held to the contrary, (131 L. R. —, 58 South, 153); and in the case of *Mott vs. Hopper*, 116 La. R. 629, which was a possessory action, we say: "the question of the right of the plaintiff to recover damages presents no difficulty. Relator argues that the solution of this question depends on the matter of ownership which cannot be determined in this action.

"The answer is that in action of trespass there can be no examination of title, and that actual possession, if legal and peaceable, is sufficient to maintain the action. 2 Hennen's Digest, 1057, No. 4. In *Nicol vs. Railroad Co.*, 44 Ann. 816, 11 South, 34, this court held that even 'as against the lawful owner, the possession of immovable property must be protected against the unlawful disturbance of his possession,' and affirmed a judgment against the defendant therein for damages." That case is followed by the decision in *Collins vs. Dalton Clark Stave Co.*, 128 La. R. 250, 54 South, 788. These decisions are decisive of the point raised.

90 Plaintiff further alleges that the fifty-fifth article of the code of practice in providing that "he who is sued in a possessory action cannot bring a petitory action until after judgment shall have been rendered in the possessory action, and until, if he has been condemned, he shall have satisfied the judgment given against him" is the taking of its property without due process of law, and in violation of the national and state constitutions.

The possessors of real estate who are entitled to bring possessory actions against those who disturb them in their possession, or in the enjoyment of the rights which they have in real property, are those who possess as owners. (Arts. 46, 47 C. P.) It is immaterial how ownership may have been acquired, provided it is in one of the methods recognized by law. If the owner's possession of the property has been disturbed he may bring the possessory action against the trespasser, and be reinstated in possession without proving title to the property. This right is permitted to the owner in possession in furtherance of the orderly administration of affairs among men; and the law directs that the disturber or trespasser must repair the results of his illegal act before he will be permitted to come into court and assert his right of ownership to the immovable trespassed upon by him. It may be that an owner of property has no recorded title. He may have acquired title by prescription resulting from possession. (C. C. art. 3457). That is one method of acquiring ownership of property with due process of law. (C. C. 3458, 3454, 3450). The possession which the owner has shall not be taken from him without due process of law. When this plaintiff forcibly entered upon the land of this defendant and disturbed him in the full possession and enjoyment of that property without warrant or authority of any kind, and in the violation of defendant's rights, the owner and possessor of the land had the legal right to come into court and compel

91 this disturber of his possession to restore that which he had taken without due process of law. These laws which protect the owner in possession from disturbance by third persons claiming title to the same thing, and which require the claimant, who has trespassed upon the property of the possessor to restore the thing which the claimant has taken violent possession of, is a process or system of law, which is equitable and legal, and will be enforced by the courts of the state. And when the law goes a step farther and says to the claimant of title that he cannot be heard to assert and prove his title to the property until he has restored the status quo, it is only another step in executing the judgment which may have been rendered in favor of the owner and possessor, and the doing of equal justice to both parties.

Plaintiff, who is claiming title, had the right to file a suit against the possessor and have the courts determine between them who was the real owner of the property. But, it preferred to resort to force and violence in asserting its alleged right, rather than to proceed in a lawful manner. Its action forced the possessor of the land to come into court to have his rights recognized and to have them restored to him. Plaintiff cannot plead ignorance of the law. In his petition in this case he alleges knowledge of the law in the following paragraphs: "plaintiff further avers that said Gray in suit No. 2485 of the docket of this honorable court, entitled George W. Gray vs. Grant Timber & Manufacturing Co., has sued plaintiff in an action of trespass for timber cut and removed by defendant from said land, and will doubtless try to prevent an adjudication upon the question of title to same in that suit on the ground that said suit No. 2485 is possessory in its nature.

92 "Plaintiff shows that the question of title is paramount and should be first decided, and that the question of ownership of the timber and recovery for its value should be first decided, and that proceedings in said suit No. 2485 should be stayed until said questions have been decided in this suit, and that the plaintiff in this suit, who is defendant in said suit No. 2485, is filing a motion praying for stay of proceedings in that suit until this suit has been fully decided." This mis-statement of the law on plaintiff's part shows conclusively that it knew the law to be that the question of title is not paramount; and that it should not be first decided, where the owner and possessor of land has filed a possessory action. The same spirit of defiance to law is here shown as was manifested when it invaded defendant's property and took the growing trees therefrom. This stand deliberately taken in defiance of law cannot prevail; and plaintiff must restore to him whom it has disturbed that which it has illegally dispossessed defendant of before it can come into court and ask to be heard on the question of title contradictorily with defendant.

The judgment appealed from is annulled, avoided and reversed; and it is now ordered, adjudged and decreed that this suit is dismissed at plaintiff's costs; reserving to plaintiff the right to sue defendant to have the question of title determined between them as to

the ownership of the land in question after judgment shall have been rendered in the possessory action; and, if it has been condemned, it shall have satisfied the judgment given against it.

Syllabus.

(1) Under civil code, arts. 3450, 3454, 3455 and code of practice, arts. 4, 6, 53 and 55, one who has had quiet possession of timber land as owner for a year or more, whether in good faith or not, is vested with a right of possession, which may serve as a basis for a possessory action, and to recover timber removed; and in such action the question of title cannot be brought in; the defendant, for the purposes of the suit, having no title.

(2) A possessory action for recovery of timber cut from land occupied by the owner survives in the form of an action for the value of the timber after it has ceased to exist, and restoration in natura has become impossible. *Smith vs. Grant Timber & Mfg. Co.*, 121 La. R. —, 58 South, 153; *Collins vs. Clark*, 128 La. R. 250, 54 South, 788; *Mott vs. Hopper*, 116 La. R. 629, 40 South, 291.

(3) Where one invades the land of another and takes violent possession thereof, he takes possession of property of another without due process of law.

(4) Were one is in full possession of immovable property as owner for more than a year, and that possession has been invaded by another, and the possessor successfully invokes the power of the courts to restore him to peaceable possession of his own property, he will not be taking the property of the trespasser; and the provision of law which requires the trespasser to make restoration before he, the trespasser, can be heard to set up title to the real estate is constitutional, and is not the taking of any thing, property, or right, from the trespasser without due process of law.

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Application for Rehearing.

In the Honorable Supreme Court of Louisiana.

No. 19232.

GRANT TIMBER & MANUFACTURING Co., Plaintiff and Appellee,
versus
GEORGE W. GRAY, Defendant and Appellant.

Application for Rehearing.

Filed Dec. 9th, 1912.
(Sg.)

PAUL E. MORTIMER, *Clerk.*

95

May It Please the Court:

In the opinion handed down in this case in referring to the motion to stay proceedings in Suit No. 19,231 (No. 2485 Lower Court), the following words are used:

"This mis-statement of the law on plaintiff's part showed conclusively that it knew the law to be that the question of title is not paramount; and that it should not be decided, where the owner and possessor of land has filed a possessory action. The same spirit of defiance to law is here shown as was manifested when it invaded defendant's property and took the growing trees therefrom."

Both plaintiff, and counsel who prepared the pleadings above referred to, disclaim any defiance of the law, or intentional mis-statement of law, and availing themselves of the only recourse open to them, respectfully request the Court to withdraw these charges.

The allegations were made, as a legal proposition which counsel for plaintiff desired to defend; and in which other distinguished lawyers of this State agreed (see briefs of *Americus Curie* in the suit of Julia A. Smith et als. vs. Grant Timber and Manufacturing Co.).

As to any wilful defiance of law by plaintiff in cutting the timber which was within defendant's enclosure, we feel justified in
96 saying that same was done without the knowledge or consent of plaintiff's counsel or its principal managers.

Plaintiff urges the following points as assignments of error:

1. In as much as the Court holds that defendant, being a possessor without title, possesses only within the limits of his enclosure; that is to say, "by inches" plaintiff should be allowed by this petitory action to establish its ownership to all of the 160 acres constituting the S. E. $\frac{1}{4}$ of Sec. 25, Tp. 10 N. R. 3 W., except the small field enclosed within defendant's fences.

2. Article 55, Code of Practice, as interpreted in this decision, and the decisions in the cases of Mott vs. Hopper, Collins vs. Dalton-Clark Stave Co., and Julia A. Smith et als. vs. Grant Timber and Mfg. Co., is unconstitutional, and violative of Article 2 of the Constitution of Louisiana and Amendment XIV, Section 1, Constitution of the United States.

Wherefore, appellee prays that a rehearing in this case be granted, and that on rehearing the privilege of submitting briefs and making oral argument be allowed, and that the points hereinabove submitted be sustained, and judgment rendered in conformity therewith.

HENRY MOORE,
H. H. WHITE,

Attorneys for Grant Timber & Mfg. Co.

Rehearing Refused.

(Extract from Minutes.)

NEW ORLEANS, MONDAY, January 6th, 1913.

The Court was duly opened, pursuant to adjournment.

Present—Their Honors:

Joseph A. Breaux, Chief Justice, and
Frank A. Monroe,
Alfred D. Land, and
Walter B. Sommerville,
Associate Justices.

Absent:

Olivier O. Provosty, Associate Justice.

By the COURT:

No. 19232.

GRANT TIMBER & MFG. CO.
vs.
GEO. W. GRAY.

It is ordered that the rehearing applied for in this case be Refused.

98 UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

I, Paul E. Mortimer, Clerk of the Supreme Court of the State of Louisiana, do hereby certify the foregoing twenty-five (25) pages to be a true copy of some of the proceedings had in the Fifth Judicial District Court for the Parish of Winn, in a certain suit wherein the Grant Timber & Mfg. Co. was plaintiff, and George W. Gray, was defendant; and also a true copy of all the proceedings had in the Supreme Court on the appeal taken by the said defendant, which appeal is now on the files thereof, under No. 19,232.

In testimony whereof, I have hereunto set my hand and affixed the seal of this court, at the city of New Orleans, this the 14th day of February, Anno Domini, one thousand, nine hundred and thirteen.

[Seal Supreme Court of the State of Louisiana.]

PAUL E. MORTIMER,
Clerk Supreme Court of the State of Louisiana.

Endorsed on cover: File No. 23,608. Louisiana Supreme Court, Term No. 136. Grant Timber & Manufacturing Company, plaintiff in error, vs. George W. Gray. Filed April 1st, 1913. File No. 23,608.

BRIEF OF PLAINTIFF IN ERROR.

(23608)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1914.

No. 136.

GRANT TIMBER AND MANUFACTURING
COMPANY,
PLAINTIFF IN ERROR,

vs.

GEORGE W. GRAY.

In Error to the Supreme Court of the State of Louisiana

HENRY MOORE, Jr.
J. R. THORNTON,
H. H. WHITE,

Attorneys for Plaintiff in Error.

STATEMENT OF CASE.

MAY IT PLEASE THE COURT:

Suit No. 19,231, Supreme Court of Louisiana, is an action brought by George W. Gray to be quieted in possession as owner of the Southeast Quarter, Section 25, Township 10 North, Range 3 West, Winn Parish, Louisiana; and for \$2500.00 value of timber said to have been cut and removed by the Grant Timber &

Manufacturing Company from said land, and for \$250.00 attorney's fees.

In this suit the Grant Timber & Manufacturing Company filed a motion to stay proceedings until the rights of property or ownership of said timber could be determined in a petitory action, which action was begun by the filing of suit No. 19,232.

Suit No. 19,232, Supreme Court of Louisiana, is a petitory action brought by the Grant Timber & Manufacturing Company to establish its ownership and consequent right to the timber on said quarter section of land.

In this suit defendant filed a motion to dismiss until final judgment and settlement of Suit No. 19,231, based on Article No. 55, Code of Practice, which forbids the bringing of the petitory action until the final disposition of the possessory action.

The motion to stay proceedings in Suit No. 19,231 was overruled.

The motion to dismiss in suit No. 19,232, was overruled, but an interlocutory judgment was rendered, staying proceedings, until decision should be rendered in suit No. 19,231.

In Suit No. 19,231, there was judgment of the lower court on trial on the merits in favor of plaintiff for \$70.00, subject to a credit of \$14.52 for taxes paid by defendant, and subject to a credit for \$18.15 for taxes paid by the warrantor, for which amounts of taxes so paid, aggregating \$32.67, judgment was recovered against said plaintiff.

The Court held that plaintiff was entitled to recover, only for the timber cut by defendant from the land which plaintiff had in possession—that is to say, his enclosure.

For greater particularity, we quote said judgment in full:

“No. 2485 (No. 19,231 in Supreme Court.)
George W. Gray vs. Grant Timber & Manufacturing Company. In the Fifth Judicial District Court, Winn Parish, La.

This cause coming on for trial, pursuant to assignment, by reason of the law and evidence being in favor of plaintiff and against defendant:

IT IS ORDERED, adjudged and decreed

that the plaintiff do have and recover of the defendant the sum of Seventy (\$70.00) Dollars, with legal interest from date, until paid, and that he be quieted in his possession of the forty acres, more or less, actually occupied by him and included in his field under fence, and that the remainder of his demand be rejected, and that defendant have the same judgment against the Sulphur Timber & Lumber Company, warrantor.

And by reason of the law and evidence being in favor of defendant and warrantor on their reconventional demand for taxes:

It is ordered, adjudged, and decreed that defendant have and recover of plaintiff the sum of Fourteen and 52.100 (\$14.52) Dollars, with legal interest thereon from date until paid, and that the warrantor, the Sulphur & Timber Company, have judgment against plaintiff for taxes paid, \$18.15, with legal interest from date until paid.

It is further ordered that said amounts of taxes be considered in partial compensation of the said judgment of Seventy (\$70.00) Dollars in favor of plaintiff.

It is further ordered that execution of this judgment be stayed until the final decision in the suit of Grant Timber & Manufacturing Company vs. George W. Gray, No. 2611 on the docket of this Court.

It is further ordered that defendant pay to plaintiff the cost of this suit, and that warrantor, the Sulphur Timber & Lumber Company, pay cost of this suit to defendant, the Grant Timber & Manufacturing Company.

Thus done, read, and signed in open Court on this 29th day of November, A. D. 1911.

GEORGE WEAR, Judge."

Suit No. 19,232 was disposed of as follows:

**"GRANT TIMBER & MANUFACTURING
COMPANY**

No. 2611

vs.

GEORGE W. GRAY.

In Fifth Judicial District Court, Parish of Winn,
State of Louisiana.

Note of evidence taken on trial in the above styled and numbered cause in the Fifth Judicial Court, Parish of Winn, State of Louisiana, Hon. George Wear, Judge. White, Thornton & Hollo-man, attorneys for Plaintiff; Mathews & Gamble, attorneys for Defendant.

Defendant objects to going into the trial of this cause for the reason that the defendant, George W. Gray, in the above entitled cause is plaintiff in a possessory action filed and still pending in this Court, entitled: George W. Gray vs. Grant Timber & Mfg. Co., No. 2485, in Fifth District Court, Winn Parish, Louisiana, which was filed February 19th, 1910, taken up and tried and judgment at this hour orally rendered in which defendants were cast as follows:

Case taken up, argument had, judgment for plaintiff recognizing his claim to the extent of the enclosure and improvements, and for timber cut thereon amounting to \$70,00 and that plaintiff be decreed to pay to the Grant Timber & Mfg. Co. the sum of \$14.52, and to Sulphur Timber & Lumber Co. \$18.50, amount of taxes paid; that execution be stayed until suit, Grant Timber & Mfg. Co. vs. No. 2611 George W. Gray, be disposed of, and that same judgment rendered against defendant be rendered against warrantor.

That said judgment has not been written up and signed for want of time for its preparation, and according to the rules of Court, that said George W. Gray decides to appeal and will appeal from said judgment, when written up and signed, to the Honorable Supreme Court of Louisiana.

Therefore, defendant George W. Gray objects and protests against the taking up for trial, or any other proceedings being had, in the above entitled suit, which is a petitory action, for the reason that the law provides:

"He who is sued in a possessory action cannot bring a petitory action until after judgment shall have been rendered in the possessory action, and until, if he has been condemned, he shall have satisfied the judgment given against him." In the support of which objection, defendant will offer

the entire record in suit No. 2485, entitled George W. Gray vs. Grant Timber & Manufacturing Company, in Fifth District Court, Winn Parish, Louisiana, including all the pleadings therein filed. Also offers in record the entire Court Minutes in suit No. 2485, being the same suit, with leave to substitute certified copies of said suit and minutes.

And for these reasons, supported by the proof introduced, defendant, George W. Gray, declines to file any answer or introduce any other proof at this time, and at this stage of the proceedings."

Whereupon, the following judgment was rendered by default:

"No. 2611 (No. 19232 in Supreme Court.)
GRANT TIMBER & MANUFACTURING
COMPANY vs. GEORGE W. GRAY, in Fifth
Judicial District Court, Winn Parish, La."

This cause coming on for trial pursuant to assignment, and after default regularly entered, and three (3) judicial days having elapsed after default, by reason of the law and evidence being in favor of the plaintiff, and against the defendant:

IT IS ORDERED, adjudged, and decreed that plaintiff be confirmed in the ownership and title to the land involved in this suit, to-wit: The S. E. 1-4 of Section 25, Tp. 10 N. R. 3 West, in Winn Parish, Louisiana, and that plaintiff be placed in possession of same as owner, and that defendant pay all cost of this suit.

Thus done, read, and signed in open Court on this, the 29th day of November, A. D., 1911.

GEORGE WEAR, Judge."

SPECIFICATIONS OF ERRORS.

First: The Supreme Court of the State of Louisiana erred in holding Article 55 of the Code of Practice of the State of Louisiana to be constitutional.

Second: The Supreme Court of Louisiana erred in overruling defendant's motion to stay proceedings in this suit until there had been a final adjudication of the questions of title and property involved in this suit,

which questions had been presented for adjudication in the suit of Grant Timber and Manufacturing Company vs. George W. Gray, No. 19,232 in the Supreme Court of Louisiana, the pleadings and judgment of which are made a part of this record, said motion based on the ground that any judgment in favor of plaintiff (defendant in error) for value of timber cut and removed without the plaintiff first proving ownership, would be a taking of defendant's (petitioner in error) property, without due process of law, and in violation of Amendment 14, Section 1, of the Constitution of the United States.

Third: The Supreme Court of Louisiana erred in amending the judgment of the lower court by striking therefrom the order for a stay of execution.

Fourth: By virtue of said Article 55, and the decision of the Supreme Court of Louisiana, the Grant Timber & Manufacturing Company is made to pay for taking property which it claims to own without ever having had a day in Court to test the question of ownership.

The cases No. 19,231 and 19,232, were consolidated in the Supreme Court of Louisiana for trial, but separate judgments were rendered, No. 19,231 was affirmed, with minor amendments. No. 19,232 was reversed.

ARGUMENT AND AUTHORITIES.

"He who is sued in a possessory action can not bring a petitory action until after judgment shall have been rendered in the possessory action, and until, if he has been condemned, he shall have satisfied the judgment given against him."

Art. 55, Code of Practice.

The position of the Grant Timber & Manufacturing Company is two-fold.

1. Suit No. 19,231 is not a possessory action in so far as it seeks to recover for the value of the timber, but is really an action to be deemed to be the owner of said timber and to recover its value as having been taken by the Grant Timber & Manufacturing Company, without right or ownership.

On this point we would observe that the character

of suits is to be determined *not by the label of the suit, but by the substance of the demand and the relief sought.*

"The object or purpose of a suit, or the matter in dispute should be determined, not by the prayer of the petition alone, but from the body of the petition in conjunction with the prayer."

State ex rel. Levet v. Lapeyrollerie, 38 Ann.

12.

"The character of a suit is determined by the substance of the demand, not the mere form of expression used in the petition."

Hendricks v. City, 50 Ann., 1244.

The suit No. 19,231 is in its greatest essential, viz: The demand for the value of the timber, very closely analogous to the action of trespass.

The case at bar is on all-fours as to the particular question now under discussion with that of South Louisiana Cypress Co. vs. Riggs Cypress Co., when Chief Justice Breaux (119 La. p 200) says:

"The action of trespass cannot be maintained for the reason that it would not be possible to prove title to the land and without proving title to the land, and without proof of title to the land in the action as brought, it would not be possible to recover damages for the trespass alleged. If plaintiff has a right it springs from the title.

Plaintiff's whole claim to the trees is grounded on trespass and on the title to the land."

So. La. Land Co. vs. Riggs Cyp. Co., 119 La., 200.

If the plaintiff, George W. Gray, can in suit No. 19,231, simply because he chooses to call it a possessory action, recover \$2500.00 for trees which were a part of the realty, without proving that he owned them, every principle of natural right and justice would be violated; nor can he prove ownership of the trees without proof of title to the land.

It was, in our opinion, never the intention of the lawmakers to give Art. 55, C. P., such an application. As soon as the plaintiff coupled with his demand for possession the demand for the value of the trees, he abandoned the purely possessory feature and threw himself upon the decision of the Court for a judgment involving what is commonly called the rights of property.

Again we would say that this action is similar to and should be construed in the light of the common law on the same subject, which is clearly as follows:

"The wrongful possessor of realty cannot recover for damage to the realty in trespass, but he may recover direct damages for injuries to his person or property through the wrongful invasion, even against the real owner. Although in possession he cannot recover against the owner of the fee with the right of possession, and his possession extends only to his actual occupancy."

28 A. & E. Encyc. p. 577.

Counsel for Mr. Gray relies very strongly upon the decision in the case of Mott vs. Hopper, 116 La., 629, which holds that "Plaintiff in actual possession * * * * * can maintain a possessory action coupled with an injunction, against a defendant who has disturbed his possession by cutting and removing timber from the premises."

We admit that all this is even so, but if the decision can be tortured into meaning anything further, it has been clearly overruled by the much later case of South Louisiana Land Co. vs. Riggs, 119 La. p. 200, which was above cited.

Neither do we think that Gray can draw any just comfort from the case of Collins vs. Dalton Clark Stave Co., S. R. 54, No. 11, p. 788, which simply holds that the possessory action and the action for cutting timber may be cumulated in one action. *The decision does not say that such cumulation makes the whole action purely possessory.*

We submit that on this branch of the case the Riggs case, 119 La. p. 200, is much better reasoned and founded in law than the strained construction sought to be placed on the cases relied on by Gray.

2. The second ground taken by the Grant Timber & Mfg. Company, is as follows:

If Art. 55 of the Code of Practice and its context has been so construed by our Court in the Mott and Collins or other cases as to mean that the price or value of property may be recovered without first proving ownership; or, in other words, if the Grant Timber & Mfg. Company can be made under guise of this Article

to pay for trespass on property which it claims to own, without having ever had a day in Court to test the question of ownership, then said Article 55 and its associate Articles are unconstitutional and violative of Article 2 of the Constitution of Louisiana, and Amendment XIV, Sec. 1, of the Constitution of the United States. The clause of said amendment which we invoke is as follows:

“Nor shall any State deprive any person of life, liberty, or property, without due process of law.”

In this case, if Gray's construction of Art. 55, C. P. is correct, property worth \$2500.00, real in its nature, may be taken without the Court ever having heard one syllable of evidence or pleading as to its ownership; although the Grant Timber & Mfg. Company is offering in every possible way to allege and prove its ownership of same.

“Due process of law” has been many times defined, but the definitions and decisions agree on two essentials (A) *Notice*; (B) *An Opportunity of Defense*.

In the matter at bar, partial, though not full notice has been given, but *no opportunity of defense*.

The attorneys of Gray have by their motion to dismiss, attempted to snatch from the hands of the Grant Timber & Mfg. Company, every weapon, either of defense or offense, and to close to them the doors to the Courts of Justice. If they prevail there is “no day in Court” for the said Company.

It may be urged that the Grant Timber & Mfg. Company should have brought their petitory action before Gray brought his so-called possessory action.

The answer is that Gray does not pretend to claim under any recorded title, but by some, to us, unknown, right, derived from some “actual settler,” on N. O. P. grant lands, the name of said settler, if he ever existed, and the extent and description of his intended homestead entry are utterly unknown to anybody.

We wish to be clear, and we say that by virtue of said Article 55, Code of Practice of Louisiana, and the cognate law and decisions of the Louisiana Supreme Court, the Grant Timber & Mfg. Company can be made to pay for property without first having a fair and legal opportunity to prove its right and title to

same; and that said Article and decisions are unconstitutional and violative of Art. 2 of the Constitution of Louisiana and the "due Process of Law" clause of Amendment XIV, Sec. 1, Constitution of the United States.

"The principle that no man shall be deprived of his liberty or property except by the 'law of the land,' or its synonym, 'due process of law,' is older than written constitutions—older even than Runnymede—and breathes so palpably of exact justice that it needs no formulation in the organic law. This principle is, however, in one form of expression or another, incorporated into the Federal Constitution, as well as those of the several states. *Quimby v. Hazen*, 54 Vt., 132-139."

"Due process of law implies at least a conformity with the natural and inherent principles of justice. *Holden v. Hardy*, 18 Supt. Ct., 383, 169 U. S. 366, 42 L. Ed. 780."

"An opportunity of defense is an essential element in the conception of 'due process of law.'" *Health Department v. Trinity Church*, 17 N. Y. Supp. 510, 512. See also *Holden v. Hardy*, 18 Sp. Ct. 383, 169 U. S. 366; 42 L. E. 780; *In re Gannon*, 18 Atl. 159-160; 16 R. I. 557; 5 L. R. A. 359; 27 Am. St. Rep. 759; *Loeber v. Schroeder*, 25 Atl. 340, 341; 76 Md. 347."

"'Due process of law' requires that the party shall be properly brought into court, and that he shall have an opportunity, when there, to prove any fact which, according to the Constitution and the usages of the common law, would be a protection to him or his property. *People vs. Essex County Surpris*, 70 N. Y. 228, 234; *Brooks v. Taylor*, 40 N. Y. Supp. 445, 449; 17 Mis. Rep. 534; *Wright v. Cradlebough*, 3 N. Y. 341, 349; *State v. Cutshall*, 15 S. E. 261, 263; 110 N. C. 538, 16 L. R. A. 130."

"'Due process of law' means as the 'law of the land,' and, as a general rule, involves an opportunity before a proper tribunal, under established procedure, to make contest in defending or enforcing a legal right. *Simmons vs. Western Union Tel. Co.* 41 S. E. 521, 522; 63 S. E. 525; 57 L. R. A. 607 (Citing *Murray v. Hoboken Land &*

Improvement Co., 59 U. S. (18 How) 272, 15 L. Ed. 372; *Pennoyer v. Neff*, 95 U. S. 714; 24 L. Ed. 572; *In re Ogles* (U. S.) 93 Fed. 426, 431."

"If property can be taken without a forensic trial and judgment, there is no security for life or liberty. None of these things can be taken away by mere legislation. *Taylor v. Porter* (N. Y.) 4 Hill, 140, 146; 40 Am. Dec. 274; *People v. City of Brooklyn* (N. Y.) 9 Barb. 535, 552."

Let it be remembered that the plaintiff in this case does not claim to be the absolute owner of the timber converted, but he claims that he was in possession of the timber converted for more than one year as owner thereof, and it certainly appears to us that the only damages he has sustained is not one of ownership, but one to his possession of the immovable in question. TO PERMIT HIM TO RECOVER ON ACCOUNT OF THIS POSSESSION THE FULL VALUE OF THE TIMBER CONVERTED WOULD BE GIVING TO HIM THE CHARACTER OF OWNER, WHICH HE DOES NOT ASSERT, AND IN THIS CASE WOULD BE REQUIRING THE OWNER TO PAY FOR HIS OWN PROPERTY BECAUSE ACCIDENTALLY POSSESSED BY ANOTHER FOR MORE THAN ONE YEAR.

Having the right to recover the value of his possession of the timber cut, and no more, and it appearing that the true owner of the timber had cut and removed it, it certainly seems to us that his recovery should be limited to the trespass alone, merely nominal, and should not be extended so as to include the value of the timber taken and thus force the defendant to pay him for the ownership of the timber, which according to the testimony was legally and morally the property of the defendant.

If the court were to declare the plaintiff entitled to the whole value of the timber cut and removed in this case, then should the defendant bring a petitory action for the land and timber, being entitled in such suit to recover both and to recover the value of the timber if it had been cut and removed by the possessor, the plaintiff, would be met with a plea of *res judicata* in so far as the value of the timber was concerned.

The plaintiff is manifestly a possessor without title

and a possessor in bad faith and would be liable to the true owner for any act which depreciated the value of the property. Being thus liable to the true owner of the property for any act depreciating the value of the property, and being thus liable for any timber cut and removed from the premises, it would be manifestly unjust to now award him a judgment for the value of the timber cut and removed, when it is legally certain that the defendant in a petitory action would be entitled to recover the land and the only equitable and the only legal rule, we submit is to permit him to recover in this action only for the value of his possession and not at this time pass on the question of ownership which he does not assert, or pretend to exist in himself.

What the value of this possession is, or may be, does not appear from the record. It certainly does not equal the value of the ownership of the timber in question and indeed must be of very small amount. It must be small, because if he is only a possessor he would have only the right of possessing the timber without using it and must ultimately account to the true owner of the land and timber for the value of both.

That the plaintiff in this case can only recover to the value of his interest, that is, the value of his possession of the timber in question, is sustained by the following authorities.

In *Russell vs. Kerney*, 27 Ga. 96, it was held:

"In trover by one having a partial interest in the chattel converted, he can recover only an equivalent for his interest."

In the case of *Dailey vs. Dismal Swamp Canal Co.*, 24 N. C. (2 Ired.) 222, it was held:

"In an action to recover for the loss of a slave which plaintiff had hired for a certain term, the measure of damages is the value of the slave's services up to the end of the term:"

In the case of *Mississippi Mills vs. Meyer*, 83 Tex 433, 18 S. W. 748, it was held:

"In an action to recover for goods wrongfully seized under an attachment defendant may prove in mitigation of damages that the plaintiff was not the real owner, but that he acquired the property by fraudulent sale, and his interest was consequently limited to possession."

In line with these authorities and in line with reason and common sense, it is earnestly submitted that the plaintiff having only sued as a possessor of the timber in question, should be limited in his recovery to the value of that possession, and the judgment appealed from allowing him to recover the full value of the ownership of the timber is manifestly erroneous.

We therefore pray that the decision of the Supreme Court of Louisiana in this cause be reserved.

Respectfully submitted,

HENRY MOORE, Jr.,
J. R. THORNTON,
H. H. WHITE,

Attorneys for Plaintiff in Error.



BRIEF OF DEFENDANT IN ERROR.

(23608)

SUPREME COURT OF THE UNITED STATES

October Term, 1914.

No. 136.

GRANT TIMBER AND MANUFACTURING
COMPANY

Plaintiff in Error

vs.

GEORGE W. GRAY.

In Error to the Supreme Court of the State of Louisiana

JOHN H. MATHEWS,

Attorney for Defendant.

MAY IT PLEASE THE COURT:

As I view this case, there is but one issue to be passed on by your Honorable Court. This issue is the question: whether or not Article 55 of the Code of Practice of Louisiana is violative of that portion of Amendment XIV, Sec. 1 of the Constitution of the United States, which reads as follows: "Nor shall any State deprive any person of life, liberty, or property, without due process of law,"—

This Federal question was raised by Grant Timber & Manufacturing Company, defendant below, in its motion to stay this suit.

George W. Gray, plaintiff below, brought a purely possessory action against Grant Timber & Manufacturing Company, defendant below, in the Fifth Judicial District Court of Winn Parish, Louisiana.

The salient averments in his petition are: Then he is in the real and actual possession as owner of SE $\frac{1}{4}$ of Sec. 25, Tp. 10, N. R. 3 West: That Grant Timber and Manufacturing Company has disturbed his possession by going upon this land and cutting down and removing timber growing in said land. That he was in the actual and real possession of said land when this disturbance occurred; That he has had possession of the land quietly, undisturbed and without interruption as owner for many years previous to his being disturbed; that by the described act of the Grant Timber and Manufacturing Company he has suffered a real disturbance in fact and in law; and that less than a year has elapsed since said disturbance has occurred.

He prays to be maintained and quieted in the possession of said land, and to be restored to the possession of that portion of which he has been evicted, viz: The timber cut and removed, and as it is impossible to restore the timber standing and growing in the land as it was, that he have judgment for its value.

(See Trs. printed p. 1).

Grant Timber & Manufacturing Company was cited to answer this petition.

Plaintiff in Error, defendant below, came into Court and answered. Denied that plaintiff was in possession of the land. Set up title in itself by certain chain of deeds; set up that it was itself in possession of the land for a period of more than ten years; reconvenes for the taxes it claims to have paid on the land; and calls its vendor in warranty.

Of all this matter in its answer, none of it is in response to Gray's possessory action, except the denial of plaintiff's possession, and the averment of possession in itself for more than a year. All the other matters contained in the answer are entirely out of place in a possessory action, wherein the question of *possession* "vel non" is alone at issue and *title* cannot be tried at all.

It is a good defense to a possessory action to show that the plaintiff is not in possession, or it is a good defense to show adverse possession in defendant for the

required year before the disturbance took place. But the matter of *title* cannot be determined in a possessory action.

So Gray moved to strike out from the answer the allegations with reference to the title in defendant by certain chain of deed and transfers. Also the allegation with reference to the matter of taxes defendant Company has paid. Also the allegations with reference to calling Sulphur Timber and Lumber Company in Warranty; and moved to vacate the order for the call in warranty, for the reason that this Cause is a Possessory Action, and, under the law defendant cannot set up title in itself by any means whatever; the question of title cannot be pleaded by defendant, tried or adjudged, in this Possessory Action.

(See motion to strike out, Trs. printed p. 5.)

After this defendant comes with a motion to stay proceedings in this Possessory Action in which motion it sets up that it has filed a separate suit to test ownership and title to the land and timber.

Avers that the question of title to the land is paramount and should be first decided. It goes on to show that there are federal questions involved, and charges that the Article of the Code of Practice which prohibit it from bringing a petitory action against Gray while his Possessory Action is pending is unconstitutional, and violative of Amendment XIV Sec. 1 of the Constitution of the United States.

Article 55 Code of Practice; and its relation to other laws of Louisiana.

In order to have a clear conception of the profound wisdom displayed by the framers of the Code, of Practice when they wrote Article 55 into this Code, it is well that we examine into the relation this Article bears to other laws of the State.

The Article appears as follows: "Petitory and Possessory Actions shall not be cumulated or joined together, except by consent of parties.

"Therefore, he who is sued in a Possessory Action cannot bring a Petitory Action until after judgment shall have been rendered in the Possessory Action, and until, if he has been condemned, he shall have satisfied the judgment given against him."

PETITORY ACTION.

"The Petitory Action, or one by which real property or any immovable right to which such property may be subjected, is claimed, must be brought against the person who is in the actual possession of the immovable, even if the person having the possession be only the farmer or lessee.

But if the farmer or lessee of a real estate be sued for that cause of action, he must declare to the plaintiff the name and residence of his lessor, who shall be made a party to the suit, if he reside in the state, or is represented therein, and who must defend it in the place of the tenant, who shall be discharged from the suit."

Code of Practice Art. 43.

"The plaintiff in action of revendication must make out his title, otherwise the possessor, whoever he be, shall be discharged from demand."

Code of Practice Art. 44.

POSSESSORY ACTION.

"The Possessory Action, which is a branch of real action, may be brought by any possessor of a real estate, or a real right, who is disturbed either in the possession of the estate or in the enjoyment of the right against him who causes the disturbance in order to be maintained in, or restored to the possession, whether he has been evicted or disturbed; provided his possession be accompanied by the qualifications hereafter required."

Article 46 Code of Practice.

Possession must be as owner, or as usufructuary.

The possessors entitled to bring these actions are those who possess as owners.

Persons entitled to the usufruct, or to the use of a real estate, and others having real rights growing from such real estate, may also bring their action, when disturbed in the enjoyment of their rights."

Code of Practice Art. 47.

REQUISITES OF POSSESSORY ACTION.

"In order that the possessor of a real estate or one who claims a right to which such estate may

be subjected, may be entitled to bring a Possessory Action, it is required:

1. That he should have had the real and actual possession of the property at the instant when the disturbance occurred; a mere civil or legal possession is not sufficient:

2. That he should have had that possession quietly and without interruption, by virtue of one of the titles prescribed in the 47 Article, for more than a year previous to his being disturbed; provided the possession of less than a year be sufficient, in case the possession should have been evicted by force or by fraud;

3. That he should have suffered a real disturbance either in fact or in law;

4. That he should have brought his suit, at the latest, within the year in which the disturbance took place.

GOOD OR BAD FAITH IMMATERIAL.

"When the possession of the plaintiff is accompanied with all those circumstances, it matters not whether he possesses in good or bad faith, or even as a usurper, he shall be entitled to his possessory action."

Article 49 Code of Practice.

REQUIRED PROOF.

"The plaintiff in Possessory Action needs only, in order to make out his case, to prove that he was in possession of the property in question, in the manner required by this Code, and that he has been either disturbed or evicted within the year previous to his suit.

So that when the possession of the plaintiff, or the act of disturbing him is denied, no testimony shall be admitted, except as to the fact of the possession, or as to the act of disturbance, and all the testimony relative to property shall be rejected." Article 53 Code of Practice.

Article 54 declares that a Petitory waives Possessory Action.

Then follows Article 55 which is attacked in this suit.

The Revised Civil Code of Louisiana deal on this subject.

"Rights which are common to all possessors in good or bad faith are: (1) That they are considered provisionally as owners of the thing which they possess, so long as it is not reclaimed by the true owner or person entitled to reclaim it, and, even after such reclamation, until the right of the parties making it is established.

"(2) That every person who has possessed an estate for a year or enjoys peaceably and without interruption of a real right, and is disturbed in it, has an action against the disturber either to be maintained in his possession, or to be restored to it in case of eviction, whether by force or otherwise."

Article 3454 Civil Code.

"The action which a possessor for one year has against a person disturbing his possession, to be maintained in it or restored to it, as is said in the preceding article, shall be decided before pronouncing on the question of ownership, and the real owner shall not be allowed to repel it by endeavoring to prove his right."

Article 3455 Civil Code.

From this it is provided by the laws of Louisiana; that the person who claims to be the *owner* of real estate, and finds another person in *possession* of such real estate, has the ample remedy to sue the possessor, for the *ownership* and *possession* and have that matter judicially determined. But is not permitted by the law to constitute himself the *Judge* of whether or not he is the owner, and extra judicially invade the property, or go take it from the one in possession, "*vi et armis*" as it were without any legal process whatever.

On the other hand if he who claims to be the owner, and out of possession, sees fit to disregard his legal remedy, and goes and undertakes to take the land or any part of it away from him who has had the possession of it for more than a year, "*vi et armis*" as it were, then the possessor has the legal remedy to bring suit against such disturber and recover that of which he has been evicted and be maintained in the possession of the land, on proof of *possession*, alone. In such a suit the disturber is prohibited from pleading *title*, and is

prohibited from filing or trying a Petitory Action while the Possessory one is pending.

130 La. Rept. 471, Smith vs. Grant Timber & Manufacturing Co.

116 La. Rept. 629, Mott vs. Hopper.

128 La. Rept. 250 Collins vs. Dalton Clark Stave Co.

Nor are such provisions a denial of "*Due Process of Law*." On the contrary they provide for "*Due Process of Law*."

What is due process law in the states is regulated by the law of the state.

92 U. S. 90: 23 La. Ed. 678 Walker vs. Souvinet.

Due process of law within the meaning of the 14th Constitutional Amendment is secured if the laws operate on all alike, and do not subject the individual to an arbitrary exercise of the powers of government.

148 U. S. 657: 37 La. Ed. 599, Giozza.

It has been held by your Honorable Court, that the words "*Due Process of Law*" as used in the Constitutional Amendments, mean the law of the land.

And since it is wholly within the province of a state to make the law on the subject of *title*, and the subject of *possession* of land within its borders, the *laws* that the Legislature of the State does pass on the subject is the *law* of the *land*. And "*Due Process of Law*" means a conformity with such laws so passed.

We submit that there is no error in the decision of the Supreme Court of Louisiana, and ask that it be affirmed.

Respectfully submitted,

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of Counsel.